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Wednesday
November 26, 1986

Briefings on How To Use the Federal Register—
For information on briefings in New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.,

WHERE: Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212–264–4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412–644–INFO
Philadelphia: 215–597–1707, 1709

Contents

Federal Register

Vol. 51, No. 228

Wednesday, November 26, 1986

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

Presidential Documents

Title 3—

The President

Proclamation 5577 of November 24, 1986

American Indian Week, 1986

By the President of the United States of America

A Proclamation

The Americans we know as American Indians and Native Americans were the first explorers and settlers of the areas that now make up the United States. Mountain and river, lake and valley, State and county, trail and town across the land bear Indian names; they are lasting reminders of the presence and the significance of American Indians not just in our geography but throughout the whole of American history.

Many of the foods we eat and the medicines and remedies we use were introduced by Indians, and more than one highway follows an Indian trail. Indians make contributions in every area of endeavor and American life, and our literature and all our arts draw upon Indian themes and wisdom. Countless American Indians have served in our Armed Forces and have fought valiantly for our country. All Americans are grateful for these lasting contributions.

We look to the future with the expectation of even stronger tribal governments and lessened Federal control over tribal government affairs. We look to a future of development of economic independence and self-sufficiency, and an enhanced government-to-government relationship that will allow greater Indian control of Indian resources.

During the Thanksgiving season, generations of Americans have been reminded of the early friendship of the Pilgrims and American Indians. We give thanks to God for the friendship, cooperation, and brotherhood between American Indians and other Americans, as we thank Him for all the many blessings He bestows on us. We thank Him for all that American Indians and Native Americans have meant and continue to mean to American life.

The Congress, by Public Law 99–471, has designated the week of November 23 through November 30, 1986, as "American Indian Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 23 through November 30, 1986, as American Indian Week, and I request all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc 86-26874
Filed 11-25-86; 11:12 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5578 of November 24, 1986

National Family Caregivers Week, 1986

By the President of the United States of America

A Proclamation

America is the land of opportunity. But few Americans stop to think that among our greatest opportunities is a longer life span than previous generations ever would have dreamed possible.

Americans are living longer, and their lives are more productive than ever before. The number of people 65 years old or older continues to grow rapidly, and there has been an unprecedented increase in persons 85 or older. With this blessing comes the reality that advancing age can bring increased frailty and disability. Some 5.2 million people have disabilities that leave them in need of help with such daily tasks as dressing, bathing, and food preparation.

The prime source of such care for these people is their families. These loving family caregivers provide 80 to 90 percent of the medical care, household maintenance, transportation, and shopping needs of older persons. Too little recognition is given in our society to those who perform such a labor of familial love. Anyone who has personally cared for a loved one or who has witnessed such care knows that, however gratefully received, the effort is often physically and emotionally challenging.

For these reasons, it is important that all Americans have a greater awareness of and support for the vital role of family caregivers. I also ask individual Americans to think about the older people in their neighborhoods, to lend a hand when the opportunity presents itself, and to offer a friendly smile of greeting to older people. This is a wonderful way to repay the lifetime of care, kindness, and assistance that older people have already given others. It is also a fine way to discover afresh that older Americans, despite the disabilities they might have, can give everyone a great deal of love, wisdom, and friendship in return.

The Congress, by Public Law 99–477, has designated the week beginning November 24, 1986, as "National Family Caregivers Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 24, 1986, as National Family Caregivers Week. I call upon the American people, State and local governments, communities, neighbors, and other interested persons to observe this occasion with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-26875
Filed 11-25-86; 11:13 am]
Billing code 319.01-M

Rules and Regulations

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues to suspend through February 1987 portions of the Eastern Colorado Federal milk order that relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continued suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 28, 1986; published November 3, 1986 (51 FR 39863).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on November 3, 1986 (51 FR 39863) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of November 1986 through February 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

Statement of Consideration

This action continues for the months of November 1986 through February 1987 suspension of the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. Earlier actions suspended these provisions for the months of September 1985 through October 1986.

The order provides that a cooperative may divert a quantity of milk not in excess of 30 percent of the cooperative association's member milk received at pool distributing plants in the months of March, April, May, June, July and December, and 20 percent in other months. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The continued suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association of producers supplying the market. Mid-Am also requested the earlier suspensions. The cooperative association stated that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and has continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk during the first 7 months of 1986 increased 10.7 percent over the same period in 1985. At the same time, producer milk used in Class I increased only 1.3 percent. Mid-Am stated that as a result of increased milk production, there are ample supplies of local milk available to meet the fluid requirements of Denver-area distributing plants. The cooperative estimated that approximately 15 loads of producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative stated that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

No comments in opposition to the proposed action were received. Comments supporting the proposed action were filed by Mountain Empire Dairymen's Association (MEDA), a cooperative association representing most of the producers pooled under the order. Mid-Am also filed comments that provided additional information in support of the suspension.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the suspension of the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be continued for the months of November 1986 through February 1987 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of November 1986 through February 1987:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.12 [Amended]

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant" are suspended.

3. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing" are suspended.

Effective Date: November 26, 1986.

Signed at Washington, DC, on November 19, 1986.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 86–26620 Filed 11–25–86; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1951

Implementation of Administrative Offset

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) adds a regulation to permit administrative offset against amounts that would otherwise be paid by other Federal agencies to delinquent FmHA Farmer Program loan borrowers. The objective is to inform the public of the procedures that will be used by FmHA to exercise administrative offset. The intended effect is to allow the Agency to collect amounts that would otherwise be paid to delinquent borrowers.

EFFECTIVE DATE: November 26, 1986. Comments must be submitted on or before December 26, 1986.

ADDRESSES: Send comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348–S, 14th and Independence SW., Washington, DC 20250. All written comments will be available for public inspection during normal working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bob Nelson, Management Analyst, telephone (202) 475–4705, Farmers Home Administration, U.S. Department of Agriculture, Room 5423, South Agriculture Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub.L. 91–190, an Environmental Impact Statement is not required.

This activity is listed in the Catalog of Federal Domestic Assistance under Farm Ownership Loans, specifically related to non-farm enterprise loans (No. 10.407) and Soil and Water Loans (SW Loans) (No. 10.416) and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.) Emergency Loans (No. 10.404) and Farm Operating Loans (No. 10.406) are excluded from the Executive Order.

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. Good cause exists to make this regulation effective immediately and not to publish the regulation as a proposed rule. The rule is interpretative only and publication as a proposed rule is unnecessary. This regulation applies to Farmer Program borrowers who have been offered the opportunity to restructure their debts and whose accounts have been accelerated.

While delinquent debts owed to FmHA remain unpaid, FmHA must borrow money to operate which increases the Federal deficit. Increased Government borrowing causes interest rates to rise and reduces the availability

of credit in the country. The Debt Collection Act of 1982 (31 U.S.C. 3701, 3711 and 3716–19), the Attorney General-Comptroller General's joint claims collection standards for agencies (4 CFR Parts 101 through 105) and the Department of Agriculture's debt collection regulations (7 CFR Parts 1 and 3) contain specific and detailed requirements which agencies of the Department must follow in order to collect debts by offset. The FmHA regulation does not add to those existing requirements. The regulation simply restates those requirements and identifies the FmHA employees who are responsible for fulfilling those requirements for FmHA. Publication as a proposed rule is unnecessary because no new requirements or restrictions are imposed on those who are already subject to the Departmental regulation. Making this FmHA regulation effective immediately upon publication is warranted because the regulation does no more than give guidance to FmHA's staff and affected parties as to how the Agency intends to administer the Debt Collection Act, the Attorney General-Comptroller General regulation, and the Departmental regulation.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0575–0119.

List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Accounting, Credit.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 42 U.S.C. 1480; CFR 2.70.

2. Subpart C consisting of §§ 1951.101 through 1951.150 is added to read as follows:

Subpart C—Offsets of Federal Payments to FmHA Borrowers

Sec.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

§ 1951.101 General.

The Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Deficit Reduction Act of 1984 authorize Farmers Home Administration (FmHA) to use administrative, salary and Internal Revenue Service (IRS) offsets to collect delinquent debts. Any money that is or may become payable from the United States to an FmHA borrower may be subject to offset for the collection of a delinquent debt the borrower owes to FmHA. In addition, money may be collected from an FmHA's borrower's pay for delinquent amounts owed by that borrower to FmHA if the borrower is an employee of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve.

§§ 1951.102–1951.104 [Reserved]

§ 1951.105 Administrative offset.

When a Farmer Program borrower is owed money by another Federal agency (except a tax refund owed by IRS), this section explains how to collect delinquent amounts owed by that borrower to FmHA. Payment up to the delinquent amount will be made to FmHA directly by the other Federal agency. The delinquent amount does not have to be reduced to judgment or be undisputed and the payment does not have to be covered by an FmHA security instrument. Before another Federal agency can be asked to offset any amount, the borrower's account must be accelerated. Offset cannot be used, if, according to State law, accepting a payment after acceleration has the effect of reinstating the account. A State supplement must be issued explaining whether offset can be used in each State. Section 1955.15(d)(3) of Subpart A of Part 1955 of this chapter is not applicable to this situation. Decisions made under the following sections are not appealable under Subpart B of Part 1900 of this chapter.

(a) *Feasibility of administrative offset.* The first step a County Supervisor must take to use this offset procedure is to decide if offset is feasible. If the County Supervisor decides that offset is not feasible, the reasons for this decision will be documented in the running case record and no offset will be made. If offset is feasible, the directions in the following sections will be used to collect by offset. Offset is *not* feasible if:

(1) It is not practical. For example, the cost to the Government of collecting by offset might exceed the amount of the delinquency.

(2) Making the payment directly to FmHA would substantially interfere with or defeat the purpose of the other Federal agency.

(3) The account has not been accelerated.

(4) There are legal obstacles to collecting the debt. For example, if the borrower is under the jurisdiction of a bankruptcy court or if the statute of limitations on collecting the debt has expired, the debt cannot be collected by offset. The State Office should contact the Office of General Counsel (OGC) for advice, if necessary.

(b) *Notice to borrower of administrative offset.* After the County Supervisor has determined it is feasible to collect by offset, the County Supervisor will send the borrower FmHA Form Letter 1951–1 or FmHA Form Letter 1951–2. This will be personally delivered to the borrower or sent by certified mail, return receipt requested, with a copy sent by regular mail on the same day. If the certified mail receipt is returned, it will show when the borrower received the FmHA Form Letter and the time limits set out in FmHA Form Letters 1951–1 or 1951–2 will run from that date. If delivery by certified mail is not accomplished, FmHA will assume that the borrower received the FmHA Form Letter by regular mail on the day the certified mail was refused or was unable to be delivered. If the borrower does not take any action within the time limits set out in FmHA Form Letter 1951–1, the County Supervisor will prepare and send FmHA Form Letter 1951–3 as required by § 1951.105(d) of this subpart. FmHA Form Letter 1951–2 may be used if the County Supervisor has reason to believe that another Government agency is about to make a payment to a borrower *and* if failure to make an offset would substantially prejudice the government's ability to collect *and* if there is not enough time to use FmHA Form Letter 1951–1 and complete the procedures set out in § 1951.105 of this subpart. FmHA Form Letter 1951–2 may also be used if the borrower had an FmHA appeal hearing to contest the delinquency and the existence of the debt. FmHA Form Letter 1951–2 may not be used in any other circumstances. If FmHA Form Letter 1951–2 is used, FmHA Form Letter 1951–3 will be prepared and sent as set out in this subpart.

(c) *Borrower's request for records, offer to repay or request for a review regarding administrative offset.* (1) If a borrower responds to FmHA Form Letters 1951–1 or 1951–2 by asking to review and copy FmHA's records relating to the delinquent debt, the County Supervisor must promptly respond by sending a letter which tells the borrower the location of the borrower's FmHA files and that the files

may be reviewed and copied within the next 30 calendar days. Copying costs (see FmHA Instruction 2018–F) and the hours the files will be available each day will be set out in the letter.

(2) If a borrower responds to FmHA Form Letter 1951–1 by offering to repay the delinquency, the offer will be accepted only if the County Supervisor decides that an offset would result in undue financial hardship to the borrower or would be unfair to the borrower for some reason. This decision will be documented in the running case record and the borrower will be sent a letter which sets out the County Supervisor's decision to accept or reject the offer to repay. Form FmHA 440–9, "Supplementary Payment Agreement," will be used if a repayment offer is accepted. The County Supervisor must decide whether to accept the offer within 45 calendar days after the initial offer to repay is made.

(3) If a borrower responds to FmHA Form Letters 1951–1 or 1951–2 by asking for a review of FmHA's determination that a debt exists and/or is delinquent, the borrower then has 10 calendar days to send the County Supervisor evidence supporting the borrower's position. As soon as possible, the County Supervisor will forward the borrower's request for a review, the borrower's case file and all evidence provided by the borrower to the District Director for review. If the borrower asked for a hearing, the District Director will decide if one is needed. A hearing is needed only if the question of the delinquency and the existence of the debt cannot be determined from a documentary review of the borrower's file and any other evidence provided. If a hearing is needed, the borrower will be informed in writing of the time and place of the hearing; Exhibit A to Subpart B of Part 1900 of this chapter will be sent to the borrower and those directions will be followed. If the borrower requests a hearing and the District Director determines that a hearing is not needed, the District Director will inform the borrower in writing of why a hearing is not needed within 15 calendar days of receiving the borrower's file and evidence. The District Director will then conduct a documentary review within 45 days of when the borrower asked for a review. At the hearing or after the documentary review, the District Director will decide whether the debt exists and/or is delinquent; this decision will be made within 30 calendar days of the hearing or review. The District Director will send the borrower a letter which explains the decision. The District Director's decision is final and the borrower has no right to a further review. Copies will be sent to the borrower's attorney (if any), the County Supervisor, and the Assistant Secretary for Administration, USDA, Washington, DC 20250.

(4) The time limits set in FmHA Form Letters 1951–1 or 1951–2 run concurrently. If a borrower asks to review the FmHA file and offers to repay the debt, the borrower cannot take 30 calendar days to ask to review the FmHA file and then take an additional 30 days to offer to repay. The request to review the file, the offer to repay and/or request for a review must all be made within 30 days of the date the borrower receives the FmHA Form Letter. FmHA then has a maximum of 45 calendar days from the day the borrower's request is received by FmHA to evaluate the offer to repay or complete the review.

(d) *Request for administrative offset.* If FmHA Form Letter 1951–2 has been sent, FmHA Form Letter 1951–3 will be prepared and mailed immediately by the County Supervisor. If FmHA Form Letter 1951–1 has been sent, FmHA Form Letter 1951–3 will be prepared by the County Supervisor after: (1) The borrower has reviewed the file (or the time for review has expired, whichever comes first); (2) a review of the record and any evidence provided by the borrower or a hearing has been concluded and a decision has been made that the debt exists and is delinquent; or (3) a decision is made whether to accept a repayment offer. FmHA Form Letter 1951–3 will be sent by the County Supervisor to the Agricultural Stabilization and Conservation Service (ASCS), Federal Crop Insurance Corporation (FCIC) or any other Federal agency likely to have money scheduled to be paid to the borrower. Exhibit A of this subpart (available in any FmHA office) provides the addresses of officials to whom a completed FmHA Form Letter 1951–3 should be mailed. The County Supervisor will send a copy of the completed FmHA Form Letter 1951–3 to the State Administrative Officer.

(e) *Application of payments, refunds and overpayments for administrative offset.* (1) Only delinquencies can be collected by offset. Therefore, if an FmHA Form Letter 1951–3 is submitted to another Federal agency which owes a borrower an amount in excess of the FmHA delinquency, that excess will be remitted to the borrower by the other agency.

(2) If a borrower is delinquent on more than one FmHA debt, amounts collected by offset will be distributed and applied as regular payments.

(3) If a borrower receives FmHA Form Letter 1951–2 of this subpart and an offset is made and after a review of the FmHA file and any evidence presented by the borrower the County Supervisor/District Director decides that the offset should not have been made or should have been made for a lesser amount, a refund will be processed promptly in accordance with § 1951.13(b) of Subpart A of Part 1951 of this chapter. The borrower is not entitled to interest on the amount refunded.

(4) If FmHA receives money through an offset but the borrower is not delinquent at the time or the amount received is in excess of the delinquency, the entire amount or the amount in excess of the delinquency must be refunded promptly to the borrower in accordance with § 1951.13(b) of Subpart A of Part 1951 of this chapter. The borrower is not entitled to any payment of interest on the refunded amount.

(5) All amounts collected by offset will be recorded on Exhibit B of this subpart (available in any FmHA office) by the County Supervisor. Exhibit B will be filed in operational file 1951–Offsets, and a copy will be sent to the State Administrative Officer every six months.

(f) *Cancellation of administrative offset.* If a borrower's name has been submitted to another agency for offset and the borrower's account is brought current (either by payment or by some servicing action), the County Supervisor will notify the other agency that the borrower is no longer delinquent. The addresses listed on Exhibit A of this subpart (available in any FmHA office) will be used for ASCS and FCIC.

(g) *Administrative offset of FmHA money.* FmHA will not offset its loan or grant funds at the request of other agencies. Information provided by other agencies about debts owed to them will be considered by FmHA when it evaluates a borrower's repayment ability and will be compared to financial information that the borrower provided.

§§ 1951.106–1951.149 [Reserved]

§ 1951.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0119.

Dated: August 1, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86-26708 Filed 11-25-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-80-116]

Energy Conservation Program for Consumer Products; Amendments to Provisions for the Waiver of Consumer Product Test Procedures

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. Manufacturers currently may petition DOE to temporarily waive test procedures for a particular product. A waiver may be granted when characteristics of the product prevent the use of the prescribed test procedures or lead to test procedure results that provide materially inaccurate comparative data. Today's rule will simplify the waiver process so that a manufacturer, when petitioning DOE for a test procedure waiver, may also request, and if eligible, be granted, an interim waiver of test procedure requirements while DOE considers the petition for waiver.

EFFECTIVE DATE: December 26, 1986.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Room GF-217, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., Department of Energy, Office of General Counsel, Mail Station GC-12, Room 6B-128, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION:

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619),[1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. The consumer products subject to this program (referred to hereafter as "covered products") are: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. See section 322. The Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: Testing, labeling, and energy efficiency standards.

For each of the covered products, the Department of Energy, in consultation with the National Bureau of Standards, is required to establish test procedures which provide test results that reflect the energy efficiency, energy use, or estimated annual operating cost of each covered product. See section 323(b)(1). One hundred and eighty days after a test procedure for a product is adopted, a manufacturer must represent the energy consumption of or the cost of energy consumed by the product only in accordance with the DOE test procedure. See section 323(c). Test procedures have been prescribed relating to all products, and are amended on the basis of continuing review. The test procedures are intended for use in other program elements, such as product labeling (administered by the Federal Trade Commission pursuant to section 324 of the Act) and energy efficiency standards, as required by section 325 (a)(1) and (c) of the Act.

[1] Part B of Title III of EPCA as amended by NECPA, 42 U.S.C. 6291-6309, is referred to in this notice as the "Act."

b. Background

DOE has prescribed test procedures for the covered products numerated in section 322(a) (1)-(13) of the Act. Procedures to allow DOE temporarily to waive test procedure requirements under certain narrow conditions were published by the Department on September 26, 1980. 45 FR 64109. These procedures, contained in § 430.27 of the Code of Federal Regulations allow DOE, upon petition, to waive applicability of test procedures for a particular basic model if the model has design characteristics which either prevent testing according to the prescribed test procedures or which lead to test procedure results that provide materially inaccurate comparative data. Within one year of granting any waiver, DOE is required to publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. The waiver terminates on the effective date of the applicable final rule.

The test procedure waiver regulations contained no provisions to allow immediate regulatory relief to a manufacturer that might experience economic hardship during the period DOE is considering such a manufacturer's petition for a test procedure waiver. As a result, manufacturers seeking immediate regulatory relief from test procedure requirements while the applicable petition for waiver is under consideration have found it necessary to file an application for exception with DOE's Office of Hearings and Appeals as provided in 10 CFR, Part 205, Subpart D. Recognizing the need to simplify this process, on April 16, 1986, DOE published a proposal, modeled after the provisions contained in 10 CFR, Part 205, Subpart D, that would allow any manufacturer to request, concurrently, from the Assistant Secretary for Conservation and Renewable Energy both a waiver from test procedure requirements and an interim waiver from those requirements. (51 FR 12861.)

DOE proposed that any manufacturer petitioning DOE for a test procedure waiver could file an "Application for Interim Waiver" as part of or after the filing of a petition for waiver. The application would have to address what economic hardship or competitive disadvantage would result in the event that the application was denied. Under the proposal a petitioner for waiver, upon applying for an interim waiver, would be required to send a copy of such application with a copy of the

petition to all competitors, and each applicant, prior to filing with DOE, must include a list of those persons to whom the petition for waiver and application for interim waiver are being sent. DOE also proposed that an interim waiver would expire 90 days after issuance or upon DOE's grant or denial of the petition for waiver and that DOE could provide a 180-day extension of an interim waiver.

DOE requested comments on the proposal and held a public hearing in Washington, DC, on May 20, 1986, at which testimony was received from representatives of three appliance manufacturers. During the comment period that ended June 16, 1986, DOE received comments from six manufacturers.

II. Discussion of Comments

All the comments received supported DOE's proposal to simplify the test procedure waiver provisions. Carrier Corporation (Carrier, No. 10), Snyder General Corporation (Snyder General, No. 11) and Lennox Industries (Lennox, No. 13) urged adoption of the rule as proposed.[2] Amtrol, Inc. (Amtrol, No. 12), Whirlpool Corporation (Whirlpool, Testimony and No. 14), General Electric Company (GE, Testimony and No. 15) and Electrolux (Electrolux, Testimony) also supported the concept of the proposal and made recommendations on the filing requirements for petitions for waiver and applications for interim waiver, and posed questions to DOE concerning the effect of waivers and interim waivers on manufacturer energy claims and product labeling requirements.

After careful review of the testimony and comments received, DOE is amending the test procedure waiver provisions to include several of the recommendations submitted.

DOE received comments addressing information that should be contained in Petitions for Waiver and Applications for Interim Waiver.

Whirlpool and Electrolux stressed the importance of the criteria being clear and not subject to various interpretations (Whirlpool, No. 14 at 2 and Electrolux, Testimony). Whirlpool agreed that a petition and an application should identify the basic model(s) for which a waiver or interim waiver is requested and show that the particular basic model(s) has design characteristics which prevent testing according to the prescribed test procedure. However, it believes that model numbers should not be required in a petition or application since providing such information would "serve no useful purpose to the waiver process" and could reveal product models prior to introduction to the marketplace (Whirlpool, No. 14 at 3–7).

General Electric testified, and Electrolux agreed, that a Petition for Waiver and Application for Interim Waiver should include identification of all models that are included in the basic model description. In written comments, GE suggested that identification of a "family of models to be covered by waiver could be done by providing a unique alpha/numeric code" in the model number that would be used to identify the models for product labeling purposes. The company suggested that the statement "All models designated [proper alpha/numeric code inserted] are tested according to the provisions of the waiver". If, after a waiver had been granted, a manufacturer wished to add additional models to be covered by the waiver, GE recommended that the manufacturer file a new Petition for Waiver and Application for Interim Waiver (GE, No. 15 at 1).

Commenters agreed that petitioners be required to explain in detail why the existing test procedure cannot be used and provide sufficient information on the new design or feature that is the basis for the petition (GE, Testimony; Whirlpool No. 14 at 3–6; Electrolux, Testimony). Whirlpool added that a petition should include information on the uniqueness of the design, technical data and patents pending (Whirlpool, No. 14 at 3).

These commenters also agreed that a Petition for Waiver and Application for Interim Waiver describe any alternate test procedure known by the petitioner, but that knowledge of an alternate test procedure should not be used as a basis to grant an interim waiver (GE, No. 15 at 2; Electrolux, Testimony; Whirlpool, No. 14 at 7). Whirlpool added that a manufacturer should have at least 180 days to submit test data to assist DOE in gathering relevant information concerning the petition. Whirlpool emphasized that the burden of identifying an alternate test procedure is on DOE, not the manufacturer (Whirlpool, No. 11 at 7).

Finally, these commenters generally agreed that an Application for Interim Waiver should demonstrate the likely success of the Petition for Waiver and show what economic hardship or competitive disadvantage is likely to result without a favorable determination by DOE. Whirlpool and Electrolux also concluded that an interim waiver should be granted without delay if the application contains the requested basic identification and justification. The manufacturers maintain that it is the Petition for Waiver, not the Application for Interim Waiver, that should be the subject of scrutiny by DOE (Whirlpool, No. 14 at 4; Electrolux, Testimony).

The Department of Energy agrees that criteria for Petitions for Waiver and Applications for Interim Waiver should be as clear and objective as possible. DOE observes, however, that the basic criteria recommended by the commenters are the same criteria DOE has proposed. DOE concurs that information submitted by manufacturers should be substantial and thorough and while neither the Department nor the manufacturers have not defined these terms, DOE believes that it is in the manufacturers best interests to submit as much information and detail as possible.

Section 430.27 has always required a petitioner to address the "specific" requirements sought to be waived and to discuss "in detail" the need for the requested waiver, including identification of the particular basic model(s) for which a waiver is requested and the design characteristics constituting the reasons for the waiver.

In regard to identifying the basic model(s) for which a waiver or interim waiver is sought, DOE has not required, nor is requiring in today's rule, that specific model numbers be provided. However, DOE does not accept Whirlpool's contention that such information would "serve no useful purpose." A petitioner is required to clearly identify the units covered by the petition. While DOE recognizes that in some cases using model numbers could be burdensome, the Department encourages, when feasible, manufacturer use of a model number(s) to ensure that identification of the product(s) is most descriptive and concise. The Department wants to be very clear on this point: Compliance with § 430.27 (a)(1) and (b)(2) requires that, at a minimum, the basic model(s) be identified using some designator unique to that model(s) or family of models and which could be identified, for example, in a review of the manufacturer's product literature. However, DOE reserves the right to request and use the specific model numbers of the applicable basic model for identification purposes. If a manufacturer has a question concerning the applicability of a waiver, DOE

[2] Comments on the proposal were given docket numbers and are numbered consecutively, beginning with the number ten (10). Comments submitted as part of an oral presentation at the May 20, 1986, public hearing are identified as Testimony.

encourages the manufacturer to contact the Department.

DOE agrees that the granting of an interim waiver should not be based on the applicant's identification of an alternate test procedure, and nothing in DOE's regulations requires such a showing. DOE requires that a Petition for Waiver and an Application for Interim Waiver "include any alternate test procedure known to the petitioner. . . ." Clearly, however, the petitioner/applicant will have some data available since a determination was made, after testing, that the prescribed test procedure is inappropriate. The Department believes that a petitioner/applicant has a responsibility to address this issue by participating in the development of an alternate test procedure. DOE agrees with Whirlpool's suggestion that manufacturers submit test data and any other information to DOE while the Petition for Waiver is being considered. DOE points out that the Application for Interim Waiver is not the subject of the same scrutiny a Petition for Waiver receives but must address issues of the economic/competitive hardship and the likely success of the waiver petition.

Three commenters suggested that an interim waiver be granted for 180 days with an allowable 180-day extension, rather than the 90-day interim waiver, 180-day extension proposed by DOE. These commenters suggested that 90 days would not allow adequate time for a manufacturer to submit applicable field test data while DOE considers the pending Petition for Waiver and that a 180-day interim waiver could eliminate the need for an extension in case of unanticipated delays during consideration of the Petition for Waiver (Whirlpool, Testimony and No. 14 at 7; Amtrol, No. 12 at 1; and Electrolux, Testimony).

The Department agrees with the recommendation of granting interim waivers for 180 days. This change is reflected in today's notice.

Commenting on the requirements for notifying competitors, Whirlpool suggested that a petitioner have five working days from the date a Petition for Waiver is published in the Federal Register in which to send written notification. Whirlpool explained that five working days should provide ample time for a petitioner to receive a copy of the published notice. Whirlpool also stated that the proposed rule needs to be more specific about the timing and procedure for filing an Application for Interim Waiver and Petition for Waiver. Section 430.27(c)(2) of DOE's proposal stated: "Each applicant for Interim Waiver, whether filing jointly with, or subsequent to, the Petition for Waiver with DOE, shall concurrently notify in writing all known manufacturers. . . ." Whirlpool explained that from a competitive point of view, concurrent notification is more appropriate than prior notification and provides ample time for competitors to submit comments. Whirlpool explained further that concurrent would mean the same day (Whirlpool, Testimony).

DOE concurs with Whirlpool's suggestions. Today's notice reflects these changes.

General Electric also suggested a change to § 430.27(c)(2). GE recommended that certification by an applicant to DOE that a Petition for Waiver and Application for Interim Waiver have been sent to competitors also include a statement that these documents have been received by the appropriate manufacturers. GE stated that this could be accomplished by sending the documents via certified or registered mail (GE, Testimony). Whirlpool disagreed, stating that GE's suggestion would be burdensome.

DOE agrees with Whirlpool. The Department's purpose in amending the test procedure waiver provisions is to simplify and expedite the waiver process and GE's suggestion could cause unnecessary delays in that process. It is also for this reason that DOE proposed, and today's rule requires, that persons submitting comments to DOE concerning an application for interim waiver also send a copy of the comments to the applicant. Similarly, today's rule requires persons submitting comments to DOE concerning a petition for waiver also send a copy to the petitioner.

One commenter, Whirlpool, maintained that DOE should include some provisions for a petitioner to have "confidential preliminary review sessions with DOE prior to the formal filing for interim waiver." Whirlpool stated that the confidential and preliminary aspects of such a provision are "crucial" to the process working smoothly and encouraging innovation (Whirlpool, Testimony).

DOE fails to see the need to formally prescribe such provisions. The Department has been and continues to be available to discuss such matters with manufacturers. In addition, since the treatment of confidential material already is addressed at 10 CFR 1004.11, DOE believes it is unnecessary to address this further in today 's rule.

Amtrol raised the question of what would happen if DOE granted an Interim Waiver and denied the Petition for Waiver. In that event, DOE will, at that time, address the specific steps required of the manufacturer.

Finally, Whirlpool and GE expressed confusion regarding the labeling of, and advertising claims for, applicable products during the term of the waiver but before DOE amends the test procedure regulations. Both commenters urged DOE to obtain a ruling or some type of clarification from the Federal Trade Commission (FTC) on the applicability of FTC's product labeling regulations for model(s) covered by an Interim Waiver or Waiver (Whirlpool, No. 14 at 4; GE, Testimony). General Electric also questioned how a waiver or interim waiver should be treated relative to a mandatory energy efficiency standard for that product (GE, Testimony).

DOE is aware that manufacturers have questions concerning compliance with FTC labeling regulations as applied to products that have received waivers from prescribed DOE test procedures. The Department believes that the appropriate procedure for addressing these concerns is for manufacturers to request from FTC an interpretation of the applicable FTC labeling regulations. Any other limitations that might be imposed on a manufacturer by a waiver will be specified by DOE in the interim waiver or waiver. In regard to the effect of a waiver on compliance with provisions of a mandatory energy efficiency standard for a particular product, DOE would address this issue in each interim waiver or waiver granted after the applicable energy efficiency standard is in effect.

III. Environmental, Regulatory Impact and Regulatory Flexibility Reviews

a. Environmental Review

Since test procedures under the energy conservation program for consumer products are used only to standardize the measurement of energy usage and do not affect the quantity of energy usage, amending the test procedure waiver process will not result in any environmental impacts. Since it is clear that this amendment is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, neither an Environmental Impact Statement nor an Environmental Assessment was required for this rule.

b. Regulatory Impact Review

DOE has concluded that the rule is not a "major rule" for purposes of Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for

consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the rule was submitted to OMB for review without a regulatory impact analysis.

c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the rule will not have a "significant econonic impact on a substantial number of small entities." The rule affects manufacturers of covered products. As previously discussed, the rule only simplifies the test procedure waiver process.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

Issued in Washington, DC, November 14, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Sec. 323(b), Pub. L. 94–163, 89 Stat. 917, as amended by Pub. L. 95–619, 92 Stat. 3266, 42 U.S.C. 6293(b).

2. Section 430.27 is revised to read as follows:

§ 430.27 Petitions for Waiver and applications for Interim Waiver.

(a)(1) Any interested person may submit a petition to waive for a particular basic model any requirements of § 430.22, or of any appendix to this subpart, upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

(2) Any interested person who has submitted a petition for waiver as provided in this subpart may also file an application for interim waiver of the applicable test procedure requirements.

(b)(1) A Petition for Waiver shall be submitted, in triplicate, to the Assistant Secretary for Conservation and Renewable Energy, United States Department of Energy. Each Petition for Waiver shall:

(i) Identify the particular basic model(s) for which a waiver is requested, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived and shall discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models marketed in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate in a manner representative of the energy consumption characteristics of the basic model; and

(iv) Be signed by the petitioner or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a Petition for Waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE shall publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information with respect to the determination of the petition. Any person submitting written comments to DOE with the respect to a Petition for Waiver shall also send a copy of such comments to the petitioner. In accordance with paragraph (i) of this section, a petitioner may submit a rebuttal statement to the Assistant Secretary for Conservation and Renewable Energy.

(2) An Application for Interim Waiver shall be submitted in triplicate, with the required three copies of the Petition for Waiver, to the Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy. Each Application for Interim Waiver shall reference the Petition for Waiver by identifying the particular basic model(s) for which a waiver and temporary exception are being sought. Each Application for Interim Waiver shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver. Each Application for Interim Waiver shall be signed by the applicant or by an authorized representative.

(c)(1) Each petitioner, after filing a Petition for Waiver with DOE, and after the Petition for Waiver has been published in the **Federal Register**, shall, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product type (as listed in section 322(a) of the Act) and shall include in the notice a statement that DOE has published in the **Federal Register** on a certain date the Petition for Waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Each petitioner, in complying with the requirements of this paragraph, shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the Petition for Waiver has been sent.

(2) Each applicant for Interim Waiver, whether filing jointly with, or subsequent to, a Petition for Waiver with DOE, shall concurrently notify in writing all known manufacturers of domestically marketed units of the same product type (as listed in Section 322(a) of the Act) and shall include in the notice a copy of the Petition for Waiver and a copy of the Application for Interim Waiver. In complying with this section, each applicant shall in the written notification include a statement that the Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. Each applicant, upon filing an Application for Interim Waiver, shall in complying with the requirements of this paragraph certify to DOE that a copy of these documents have been sent to all known manufacturers of domestically marked units of the same product type (as listed in section 322(a) of the Act). Such certification shall include the names and addresses of such persons. Each applicant also shall comply with the provisions of paragraph (c)(1) of this section with respect to the petition for waiver.

(d) Any person submitting written comments to DOE with respect to an Application for Interim Waiver shall also send a copy of the comments to the applicant.

(e) If administratively feasible, applicant shall be notified in writing of the disposition of the Application for Interim Waiver within 15 business days of receipt of the application. Notice of DOE's determination on the Application for Interim Waiver shall be published in the **Federal Register**.

(f) The filing of an Application for Interim Waiver shall not constitute grounds for noncompliance with any requirements of this subpart, until an Interim Waiver has been granted.

(g) An Interim Waiver from test procedure requirements will be granted by the Assistant Secretary for Conservation and Renewable Energy if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver.

(h) An interim waiver will terminate 180 days after issuance or upon the determination on the Petition for Waiver, whichever occurs first. An interim waiver may be extended by DOE for 180 days. Notice of such extension and/or any modification of the terms or duration of the interim waiver shall be published in the **Federal Register**, and shall be based on relevant information contained in the record and any comments received subsequent to issuance of the interim waiver.

(i) Following publication of the Petition for Waiver in the **Federal Register**, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to the Assistant Secretary for Conservation and Renewable Energy. A petitioner may rebut more than one response in a single rebuttal statement.

(j) The petitioner shall be notified in writing as soon as practicable of the disposition of each Petition for Waiver. The Assistant Secretary for Conservation and Renewable Energy shall issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

(k) The filing of a Petition for Waiver shall not constitute grounds for noncompliance with any requirements of this subpart, until a waiver or interim waiver has been granted.

(l) Waivers will be granted by the Assistant Secretary for Conservation and Renewable Energy, if it is determined that the basic model for which the waiver was requested contains a design characteristic which either prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Waivers may be granted subject to conditions, which may include adherence to alternate test procedures specified by the Assistant Secretary for Conservation and Renewable Energy. The Assistant Secretary shall consult with the Federal Trade Commission prior to granting any waiver, and shall promptly publish in the **Federal Register** notice of each waiver granted or denied, and any limiting conditions of each waiver granted.

(m) Within one year of the granting of any waiver, the Department of Energy will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, the Department of Energy will publish in the **Federal Register** a final rule. Such waiver will terminate on the effective date of such final rule.

(n) Any person aggrieved by an action under this section may file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR Part 205, Subpart H.

[FR Doc. 86-26634 Filed 11-25-86; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 25130; Amdt. No. 334]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER IMFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same

reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on November 18, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 334 EFFECTIVE DATE, DECEMBER 18, 1986

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO DELETE		
KANSAS CITY, MO VORTAC	LINCOLN, NE VORTAC	*3500
*2800 - MOCA		MAA-35000
PUTNAM, CT VORTAC	LAWED, MA	3000
§95.6001 VOR FEDERAL AIRWAY 1		
IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	*STARY, GA FIX	**4000
*5000 - MRA		
**2100 - MOCA		
NORFOLK, VA VORTAC	CAPE CHARLES, VA VORTAC	2000
§95.6004 VOR FEDERAL AIRWAY 4		
IS AMENDED TO READ IN PART		
FLEMS, WY FIX	LIBEL, CO FIX	10000
HILL CITY, KS VORTAC	WESAL, KS FIX	*5500
*3700 - MOCA		
WESAL, KS FIX	SALINA, KS VORTAC	*4000
*2700 - MOCA		
TOPEKA, KS VORTAC	LANSI, KS FIX	3000
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO DELETE		
MENOMINEE, MI VOR	ESCANABA, MI VORTAC	
VIA E ALTER	VIA E ALTER	2500
ESCANABA, MI VORTAC	MARQUETTE, MI VOR/DME	
VIA E ALTER	VIA E ALTER	3600
§95.6009 VOR FEDERAL AIRWAY 9		
IS AMENDED TO READ IN PART		
OSHKOSH, WI VORTAC	GREEN BAY, WI VORTAC	*3000
*2300 MOCA		
IS AMENDED TO DELETE		
GREEN BAY, WI VORTAC	MENOMINEE, MI VOR	
VIA E ALTER	VIA E ALTER	2600
MENOMINEE, MI VOR	IRON MOUNTAIN, MI VORTAC	
VIA E ALTER	VIA E ALTER	3300
IRON MOUNTAIN, MI VORTAC	MARQUETTE, MI VOR/DME	
VIA E ALTER	VIA E ALTER	3600
MARQUETTE, MI VOR/DME	HOUGHTON, MI VORTAC	
VIA E ALTER	VIA E ALTER	*3600
*3000 - MOCA		

FROM	TO	MEA
§95.6013 VOR FEDERAL AIRWAY 13		
IS AMENDED TO READ IN PART		
HARLINGEN, TX VOR/DME	RAYMO, TX FIX	1600
IDDAS, LA FIX	*DUBOW, AR FIX	2000
*4000 - MRA		
§95.6016 VOR FEDERAL AIRWAY 16		
IS AMENDED TO READ IN PART		
CALVERTON, NY VORTAC	FLIBB, CT FIX	2000
FLIBB, CT FIX	NORWICH, CT VORTAC	2500
§95.6017 VOR FEDERAL AIRWAY 17		
IS AMENDED TO READ IN PART		
BROWNSVILLE, TX VORTAC	HARLINGEN, TX VOR/DME	2000
§95.6020 VOR FEDERAL AIRWAY 20		
IS AMENDED TO READ IN PART		
BARRS, NC FIX	GREENSBORO, NC VORTAC	2800
§95.6037 VOR FEDERAL AIRWAY 37		
IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	BRUNSWICK, GA VORTAC	2100
§95.6045 VOR FEDERAL AIRWAY 45		
IS AMENDED TO DELETE		
SAGINAW, MI VORTAC	BENNY, MI FIX	
VIA W ALTER	VIA W ALTER	2200
BENNY, MI FIX	*BANJO, MI FIX	
VIA W ALTER	VIA W ALTER	2500
*3000 - MRA		
BANJO, MI FIX	ZABLE, MI FIX	
VIA W ALTER	VIA W ALTER	*5000
*2600 - MOCA		
ZABLE, MI FIX	ALPENA, MI VORTAC	
VIA W ALTER	VIA W ALTER	3000
§95.6050 VOR FEDERAL AIRWAY 50		
IS AMENDED TO READ IN PART		
SAINT JOSEPH, MO VORTAC	KIRKSVILLE, MO VORTAC	*3000
*2400 - MOCA		

FROM	TO	MEA
§95.6051 VOR FEDERAL AIRWAY 51		
IS AMENDED TO READ IN PART		
ASTOR, FL FIX	JACKSONVILLE, FL VORTAC	2100
§95.6058 VOR FEDERAL AIRWAY 58		
IS AMENDED TO READ IN PART		
HARTFORD, CT VORTAC	*TRAIT, CT FIX	2500
*3000 - MRA		
§95.6078 VOR FEDERAL AIRWAY 78		
IS AMENDED BY ADDING		
ALPENA, MI VORTAC	ZABLE, MI FIX	3000
ZABLE, MI FIX	*BANJO, MI FIX	**5000
*3000 - MRA		
**2600 MOCA		
BANJO, MI FIX	BENNY, MI FIX	2500
BENNY, MI FIX	SAGINAW, MI VORTAC	2200
§95.6091 VOR FEDERAL AIRWAY 91		
IS AMENDED TO READ IN PART		
PLATTSBURGH, NY VORTAC	U.S. CANADIAN BORDER	*3500
*3000 - MOCA		
§95.6104 VOR FEDERAL AIRWAY 104		
IS AMENDED TO READ IN PART		
MALAE, NY FIX	PLATTSBURGH, NY VORTAC	5800
PLATTSBURGH, NY VORTAC	BURLINGTON, VT VORTAC	2600
§95.6112 VOR FEDERAL AIRWAY 112		
IS AMENDED TO DELETE		
PORTLAND, OR VORTAC	THE DALLES, OR VORTAC	
VIA S ALTER	VIA S ALTER	7000
§95.6121 VOR FEDERAL AIRWAY 121		
IS AMENDED TO DELETE		
*EUGENE, OR VORTAC	COBUR, OR FIX	
VIA N ALTER	VIA N ALTER	
	NE BND	5000
	SW BND	4400
*3300 - MCA EUGENE VORTAC, NE BND		
COBUR, OR FIX	MOBIL, OR FIX	
VIA N ALTER	VIA N ALTER	
	NE BND	7000
	SW BND	5200
MOBIL, OR FIX	MANTE, OR FIX	
VIA N ALTER	VIA N ALTER	
	NE BND	10000
	SW BND	8000
MANTE, OR FIX	REDMOND, OR VORTAC	
VIA N ALTER	VIA N ALTER	10000

FROM	TO	MEA
§95.6139 VOR FEDERAL AIRWAY 139		
IS AMENDED TO READ IN PART		
NORFOLK, VA VORTAC	CAPE CHARLES, VA VORTAC	2000
CELTS, MA FIX	*TONNI, MA FIX	**3000
*5000 - MRA		
**1400 - MOCA		
TONNI, MA FIX	*EXALT, NH FIX	**5000
*5500 - MRA		
**1300 - MOCA		
EXALT, NH FIX	SEEDY, NH FIX	*5000
*1300 - MOCA		
§95.6159 VOR FEDERAL AIRWAY 159		
IS AMENDED TO READ IN PART		
SIOUX CITY, IA VORTAC	HURLY, NE FIX	4500
§95.6165 VOR FEDERAL AIRWAY 165		
IS AMENDED TO READ IN PART		
ARVIN, CA FIX	SHAFTER, CA VORTAC	3000
PYRAM, NV FIX	BINNZ, NV FIX	
	NW BND	*14000
	SE BND	*12000
*10700 MOCA		
§95.6182 VOR FEDERAL AIRWAY 182		
IS AMENDED BY ADDING		
NORTH BEND, OR VORTAC	*GAMMA, OR FIX	
	S BND	4000
	N BND	4500
*6200 - MRA		
GAMMA, OR FIX	NEWPORT, OR VORTAC	4500
NEWPORT, OR VORTAC	NEWBERG, OR VORTAC	6000
NEWBERG, OR VORTAC	PORTLAND, OR VORTAC	4000
§95.6190 VOR FEDERAL AIRWAY 190		
IS AMENDED TO READ IN PART		
DALHART, TX VORTAC	GAGE, OK VORTAC	*7000
*5400 - MOCA		
§95.6193 VOR FEDERAL AIRWAY 193		
IS AMENDED TO DELETE		
WHITE CLOUD, MI VORTAC	MANISTEE, MI VOR	
VIA W ALTER	VIA W ALTER	*2900
*2300 - MOCA		
MANISTEE, MI VOR	TRAVERSE CITY, MI VORTAC	
VIA W ALTER	VIA W ALTER	2600

FROM	TO	MEA
§95.6197 VOR FEDERAL AIRWAY 197		
IS AMENDED TO READ IN PART		
ARVIN, CA FIX	SHAFTER, CA VORTAC	3000
§95.6205 VOR FEDERAL AIRWAY 205		
IS AMENDED TO READ IN PART		
BOSTON, MA VORTAC *5000 - MRA **2100 - MOCA	*WIMPY, MA FIX	**3000
WIMPY, MA FIX *5000 - MRA **2100 - MOCA	*WETTR, MA FIX	**3000
SCUPP, MA FIX *2100 - MOCA	SILVE, NH FIX	*3000
SILVE, NH FIX *2100 - MOCA	PEASE, NH VOR	*3000
§95.6216 VOR FEDERAL AIRWAY 216		
IS AMENDED TO DELETE		
SAGINAW, MI VORTAC VIA S ALTER	PECK, MI VORTAC VIA S ALTER.	3000
§95.6222 VOR FEDERAL AIRWAY 222		
IS AMENDED TO READ IN PART		
MAXON, LA FIX *3000 - MRA **1600 - MOCA	*WRACK, LA FIX	**5000
§95.6224 VOR FEDERAL AIRWAY 224		
IS AMENDED TO READ IN PART		
MARQUETTE, MI VOR/DME *3100 - MCA ESTON FIX, S BND	*ESTON, MI FIX	3000
ESTON, MI FIX	SCHOOLCRAFT COUNTY MI VOR	3100
§95.6233 VOR FEDERAL AIRWAY 233		
IS AMENDED TO DELETE		
MOUNT PLEASANT, MI VOR/DME VIA W ALTER	TRAVERSE CITY, MI VORTAC VIA W ALTER	3000
TRAVERSE CITY, MI VORTAC VIA W ALTER.	PELLSTON, MI VORTAC VIA W ALTER.	3000

FROM	TO	MEA
§95.6241 VOR FEDERAL AIRWAY 241		
IS AMENDED TO READ IN PART		
EUFAULA, AL VORTAC	COLUMBUS, GA VORTAC	2400
§95.6253 VOR FEDERAL AIRWAY 253		
IS AMENDED TO READ IN PART		
LUCIN, UT VORTAC	ROGET, ID FIX	11000
TWIN FALLS, ID VORTAC	LITKE, ID FIX	6000
§95.6267 VOR FEDERAL AIRWAY 267		
IS AMENDED TO READ IN PART		
MATEO, FL FIX *2100 - MOCA	JACKSONVILLE, FL VORTAC	*3000
JACKSONVILLE, FL VORTAC *3000 - MRA **2100 - MOCA	*BAXLY, GA FIX	**3000
§95.6269 VOR FEDERAL AIRWAY 269		
IS AMENDED BY ADDING		
REDMOND, OR VORTAC	MANTE, OR FIX	10000
MANTE, OR FIX	MOBIL, OR FIX NE BND SW BND	10000 8000
MOBIL, OR FIX	COBUR, OR FIX NE BND SW BND	7000 5200
COBUR, OR FIX	*EUGENE, OR VORTAC NE BND SW BND	5000 4400
*3300 - MCA EUGENE VORTAC, NE BND		
§95.6285 VOR FEDERAL AIRWAY 285		
IS AMENDED BY ADDING		
WHITE CLOUD, MI VORTAC *2300 - MOCA	MANISTEE, MI VOR	*2900
MANISTEE, MI VOR	TRAVERSE CITY, MI VORTAC	2800
IS AMENDED TO DELETE		
INDIANAPOLIS, IN VORTAC VIA E ALTER	WELDO, IN FIX VIA E ALTER	2900
WELDO, IN FIX VIA E ALTER	KOKOMO, IN VORTAC VIA E ALTER	2700
§95.6287 VOR FEDERAL AIRWAY 287		
IS AMENDED TO DELETE		
NORTH BEND, OR VORTAC VIA W ALTER	*GAMMA, OR FIX VIA W ALTER S BND	4000

FROM	TO	MEA
§95.6287 VOR FEDERAL AIRWAY 287—Continued		
	N BND	4500
*6200 - MRA GAMMA, OR FIX VIA W ALTER	NEWPORT, OR VORTAC VIA W ALTER.	4500
NEWPORT, OR VORTAC VIA W ALTER.	NEWBERG, OR VORTAC VIA W ALTER	6000
NEWBERG, OR VORTAC VIA E ALTER	PORTLAND, OR VORTAC VIA E ALTER	4000
§95.6310 VOR FEDERAL AIRWAY 310		
IS AMENDED TO READ IN PART		
MULBE, NC FIX *3300 - MCA BURCH FIX, W BND **5200 - MOCA	*BURCH, NC FIX	**6000
BURCH, NC FIX	GREENSBORO, NC VORTAC	2500
§95.6320 VOR FEDERAL AIRWAY 320		
IS AMENDED BY ADDING		
PELLSTON, MI VORTAC	TRAVERSE CITY, MI VORTAC	3000
TRAVERSE CITY, MI VORTAC	MOUNT PLEASANT, MI VOR/DME	3000
MOUNT PLEASANT, MI VOR/DME	SAGINAW, MI VORTAC	2600
SAGINAW, MI VORTAC	PECK, MI VORTAC	3000
§95.6325 VOR FEDERAL AIRWAY 325		
IS AMENDED TO READ IN PART		
ATHENS, GA VORTAC	WOMAC, GA FIX	3600
WOMAC, GA FIX	LOGEN, GA FIX	4000
§95.6341 VOR FEDERAL AIRWAY 341		
IS AMENDED BY ADDING		
OSHKOSH, WI VORTAC *2300 - MOCA	GREEN BAY, WI VORTAC	*3000
GREEN BAY, WI VORTAC	MENOMINEE, MI VOR	2600
MENOMINEE, MI VOR	HAVEL, MI FIX	2500
HAVEL, MI FIX	IRON MOUNTAIN, MI VORTAC	3300
IRON MOUNTAIN, MI VORTAC	MARQUETTE, MI VOR/DME	3600
MARQUETTE, MI VOR/DME *3000 - MOCA	HOUGHTON, MI VORTAC	*3600
§95.6401 VOR FEDERAL AIRWAY 401		
IS AMENDED TO READ IN PART		
CASPER, WY VORTAC	RANKK, WY FIX	11000
RANKK, WY FIX	WORLAND, WY VOR/DME NW BND SE BND	7000 11000

FROM	TO	MEA
§95.6415 VOR FEDERAL AIRWAY 415		
IS AMENDED TO READ IN PART		
NELLO, GA FIX	ANNYE, GA FIX	6000
ANNYE, GA FIX	TOCCOA, GA VORTAC	5000
§95.6431 VOR FEDERAL AIRWAY 431		
IS AMENDED TO READ IN PART		
HYANNIS, MA VORTAC *5000 - MRA **2100 - MOCA	*WIMPY, MA FIX	**3000
WIMPY, MA FIX *2100 - MOCA	BOSTON, MA VORTAC	*3000
§95.6450 VOR FEDERAL AIRWAY 450		
IS AMENDED BY ADDING		
ESCANABA, MI VORTAC	MENOMINEE, MI VOR	2500
MENOMINEE, MI VOR	GREEN BAY, WI VORTAC	2600
§95.6451 VOR FEDERAL AIRWAY 451		
IS AMENDED TO READ IN PART		
CELTS, MA FIX *5000 - MRA **1400 - MOCA	*TONNI, MA FIX	**3000
TONNI, MA FIX *5500 - MRA **1300 - MOCA	*EXALT, NH FIX	**5000
EXALT, NH FIX *1300 - MOCA	SEEDY, NH FIX	*5000
§95.6463 VOR FEDERAL AIRWAY 463		
IS AMENDED TO READ		
WOMAC, GA FIX *5900 - MCA ANNYE FIX, N BND **4100 - MOCA	*ANNYE, GA FIX	**5000
ANNYE, GA FIX	HARRIS, GA VORTAC	7000
§95.6520 VOR FEDERAL AIRWAY 520		
IS AMENDED TO READ IN PART		
PORTLAND, OR VORTAC	THE DALLES, OR VORTAC	7000
§95.6566 VOR FEDERAL AIRWAY 566		
IS AMENDED TO READ IN PART		
MUSHE, LA FIX *3000 - MRA **1600 - MOCA	*WRACK, LA FIX	**4000

FROM	TO	MEA	MAA
§95.7079 JET ROUTE NO. 79			
	IS AMENDED TO READ IN PART		
ORMOND BEACH, FL VORTAC	*STARY, GA FIX	18000	45000
STARY, GA FIX	CHARLESTON, SC VORTAC	20000	45000
§95.7121 JET ROUTE NO. 121			
	IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	*STARY, GA FIX	18000	45000
STARY GA FIX	CHARLESTON, SC VORTAC	20000	45000
§95.7143 JET ROUTE NO. 143			
	IS AMENDED TO READ IN PART		
POINT REYES, CA VORTAC	MENDOCINO, CA VORTAC	18000	45000
MENDOCINO, CA VORTAC	ROSEBURG, OR VOR	18000	45000
§95.7174 JET ROUTE NO. 174			
	IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	*STARY, GA FIX	18000	45000
STARY, GA FIX	CHARLESTON, SC VORTAC	20000	45000

[FR Doc. 86-26588 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-13-C

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-182			
IS AMENDED BY ADDING			
NEWPORT, OR VORTAC	NEWBERG, OR VORTAC	29	NEWPORT
V-287			
IS AMENDED TO DELETE			
NEWPORT, OR VORTAC VIA W ALTER	NEWBERG, OR VORTAC VIA W ALTER.	29	NEWPORT

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
J-143			
IS AMENDED BY ADDING			
MENDOCINO, CA VORTAC	ROSEBURG, OR VOR	150	MENDOCINO

14 CFR Part 97

[Docket No. 25127; Amdt. No. 1334]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW. Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW. Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents. U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument Incorporation by reference.

Issued in Washington, DC, on November 14, 1986.

John S. Kern,

Director of Flight Standards

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 12, 1987

Parkersburg, WV—Wood County Airport-Gill Robb Wilson FLD, VOR RWY 21, Amdt. 13
Parkersburg, WV—Wood County Airport-Gill Robb Wilson FLD, NDB RWY 3, Amdt. 5
Parkersburg, WV—Wood County Airport-Gill Robb Wilson FLD, ILS RWY 3, Amdt. 8

. . . Effective January 15, 1987

Gladwin, MI—Gladwin, NDB RWY 27, Amdt. 2
Owosso, MI—Owosso Community, VOR RWY 28, Amdt. 5
Mansfield, OH—Mansfield Lahm Muni, VOR RWY 14, Amdt. 12
Mansfield, OH—Mansfield Lahm Muni, VOR RWY 32, Amdt. 5
Mansfield, OH—Mansfield Lahm Muni, LOC BC RWY 14, Amdt. 6
Mansfield, OH—Mansfield Lahm Muni, NDB RWY 32, Amdt. 10
Mansfield, OH—Mansfield Lahm Muni, ILS RWY 32, Amdt. 14
Mansfield, OH—Mansfield Lahm Muni, RADAR-1, Amdt. 2
Mansfield, OH—Mansfield Lahm Muni, RNAV RWY 5, Amdt. 1
Mansfield, OH—Mansfield Lahm Muni, RNAV RWY 23, Amdt. 5

. . . Effective December 18, 1986

Auburn, AL—Auburn-Opelika Robert G. Pitts, RNAV RWY 36, Amdt. 3
Rifle, CO—Garfield County, LOC/DME-A, Orig
Venice, FL—Venice Muni, VOR/DME-A, Amdt. 4
Cornelia, GA—Habersham County, NDB RWY 6, Orig
Lawrenceville, GA—Gwinnett County, LOC RWY 25, Amdt. 2
Lawrenceville, GA—Gwinnett County, NDB RWY 25, Amdt. 3
Thomaston, GA—Reginald Grant Memorial, NDB RWY 3, Orig
Emmetsburg, IA—Emmetsburg Muni, NDB RWY 13, Amdt. 1
Emmetsburg, IA—Emmetsburg Muni, NDB RWY 31, Amdt. 1
Storm Lake, IA—Storm Lake Muni, NDB RWY 35, Orig
Baltimore, MD—Baltimore-Washington Intl, RADAR 1, Amdt. 10
Tupelo, MS—Industrial Airpark, VOR RWY 11, Amdt. 1, CANCELLED
St Louis, MO—Lambert-St Louis Intl, LDA/DME RWY 12L, Amdt. 3
St Louis, MO—Lambert-St Louis Intl, ILS RWY 12R, Amdt. 18
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR RWY 11, Amdt. 2
Atlantic City, NJ—Atlantic City Muni/Bader Field, VOR-A, Amdt. 2
Atlantic City, NJ—Atlantic City Muni/Bader Field, RNAV RWY 11, Amdt. 4
Belmar-Farmingdale, NJ—Allaire, VOR-A, Amdt. 10, CANCELLED
Belmar-Fsrmingdale, NJ—Allaire, VOR-A, Orig
Robbinsville, NJ—Trenton-Robbinsville, VOR RWY 29, Amdt. 9
Vincentown, NJ—Red Lion, VOR-A, Amdt. 5
Binghamton, NY—Edwin A. Link Field/Broome County, NDB RWY 34, Amdt. 16
Calverton, NY—Calverton Naval Weapons Industrial Reserve Plant/Peconic Field, VOR/DME or TACAN RWY 32, Amdt. 2
Calverton, NY—Calverton Naval Weapons Industrial Reserve Plant/Peconic Field, VOR/DME or TACAN A, Amdt. 2
Rochester, NY—Rochester-Monroe County, ILS RWY 4, Amdt. 11
Syracuse, NY—Syracuse Hancock Intl, NDB RWY 28, Amdt. 25
Syracuse, NY—Syracuse Hancock Intl, ILS RWY 10, Amdt. 4
Wellsville, NY—Wellsville Muni ARPT, Tarantine FLD, VOR-A, Amdt. 5
Wellsville, NY—Wellsville Muni ARPT, Tarantine FLD, LOC RWY 28, Amdt. 3
Wellsville, NY—Wellsville Muni APRT, Tarantine FLD, NDB RWY 28, Amdt. 6
Westhampton Beach, NY—Suffolk County, LOC BC RWY 6, Amdt. 3, CANCELLED
Hickory, NC—Hickory Muni, VOR RWY 24, Amdt. 23
Hickory, NC—Hickory Muni, NDB RWY 24, Amdt. 4
Hickory, NC—Hickory Muni, ILS RWY 24, Amdt. 6
Lexington, NC—Lexington Muni, VOR/DME RWY 8, Amdt. 4
Mocksville, NC—Twin Lakes, NDB RWY 9, Amdt. 2
Morganton, NC—Morganton-Lenoir, SDF RWY 3, Amdt. 3
Morganton, NC—Morganton-Lenoir, NDB RWY 3, Amdt. 3
Morganton, NC—Morganton-Lenoir, RNAV RWY 3, Amdt. 2
Salisbury, NC—Rowan County, VOR RWY 2, Amdt. 4
Salisbury, NC—Rowan County, VOR-A, Amdt. 6
Statesville, NC—Statesville Muni, VOR/DME RWY 10, Amdt. 6
Statesville, NC—Statesville Muni, NDB RWY 20, Amdt. 8
Statesville, NC—Statesville Muni, RNAV RWY 2, Amdt. 5
Wilkesboro, NC—Wilkes County, NDB RWY 24, Amdt. 5
Connellsville, PA—Connellsville, VOR-A, Amdt. 1
Connellsville, PA—Connellsville, LOC RWY 5, Amdt. 1
DuBois, PA—DuBois-Jefferson County, NDB RWY 25, Amdt. 8, CANCELLED
Mayaguez, PR—Mayaguez, NDB RWY 9, Orig
Abingdon, VA—Virginia Highlands, VOR/DME-B, Amdt. 5
Chase City, VA—Chase City Muni, NDB RWY 36, Amdt. 2
Clarksburg, WV—Benedum, VOR RWY 3, Amdt. 13
Clarksburg, WV—Benedum, NDB RWY 21, Amdt. 7, CANCELLED
Clarksburg, WV—Benedum, ILS RWY 21, Amdt. 9
Fairmont, WV—Fairmont Muni, NDB-A, Amdt. 5, CANCELLED

. . . Effective October 30, 1986

Rochester, NH—Skyhaven, NDB RWY 33, Amdt. 2

[FR Doc. 86-26587 Filed 11-25-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Lenperone Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A.H. Robins Co. providing for use of 10- and 25-milligram lenperone tablets as a tranquilizer, antiemetic, and for pre- and postoperative medication in dogs.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: A.H. Robins Co., 1405 Cummings Drive, P.O. Box 26609, Richmond, VA 23261, submitted a supplement to NADA 97-901 providing for use of 10- and 25-milligram lenperone tablets as a tranquilizer, antiemetic, and for pre- and postoperative medication in dogs. The drug is currently approved for such use as a 5-milligram lenperone tablet. The supplement is approved and the regulations are amended to reflect this approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.1236 is amended by revising paragraph (a) to read as follows:

§ 520.1236 Lenperone tablets.

(a) *Specifications.* Each tablet contains 5, 10, or 25 milligrams of lenperone hydrochloride.

* * * * *

Dated: November 18, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-26598 Filed 11-25-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of Acetyl-alpha-methylfentanyl, Alpha-methylthiofentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylthiofentanyl and Thiofentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of the narcotic substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). The temporary scheduling of these six substances is due to expire on November 29, 1986. This notice will extend the temporary scheduling of the six fentanyl analogs for six months or until rulemaking proceedings pursuant to 21 U.S.C. 811(a) are completed, whichever occurs first.

EFFECTIVE DATE: November 29, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: On October 29, 1985, the Administrator of the Drug Enforcement Administration issued a final rule in the **Federal Register** (50 FR 43698-702) amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place six fentanyl analogs into Schedule I of the Controlled Substances Act pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h). The six fentanyl analogs are:

(1) acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide)

(2) alpha-methylfentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)

(3) beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide)

(4) beta-hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide)

(5) 3-methylthiofentanyl (*N*-[1-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)

(6) thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)

The final rule which became effective on November 29, 1985 was based on findings by the Administrator that the emergency scheduling of the above referenced six fentanyl analogs was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of the Department of Health and Human Services, or on the petition of any interested party. Such proceedings regarding the six fentanyl analogs have been initiated by the Administrator.

Therefore, the temporary scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl which is due to expire on November 29, 1986, may be extended until May 29, 1987, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed; whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) the Administrator hereby orders that the temporary scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl be extended until May 29, 1987 or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a); whichever occurs first.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the extended scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl in Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). The substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl have no legitimate use or manufacturer in the United States.

It has been determined that the extension of the temporary placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Dated: November 21, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-26643 Filed 11-25-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8106]

Income Taxes; Time for Determining Relationship of Persons Transferring Depreciable Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1239 which clarify the proper time for determination of the relatedness of the transferor and transferee of depreciable property for purposes of section 1239. These final regulations provide the public with guidance as to the proper time for determining relatedness under section 1239. This amendment does not reflect amendments to section 1239 made by the Installment Sales Revision Act of 1980, the Technical Corrections Act of 1982 and the Tax Reform Act of 1984.

EFFECTIVE DATE: The regulations are effective for transfers after January 6, 1983.

FOR FURTHER INFORMATION CONTACT: Robert Beatson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1983, the **Federal Register** published proposed amendments (48 FR 667) to the Income Tax Regulations (26 CFR Part 1) under section 1239 of the Internal Revenue Code of 1954. One comment was received regarding this proposal. A public hearing was neither requested nor held. After consideration of this comment, these amendments are adopted as revised by this Treasury Decision.

Explanation of Provisions

Section 1239 disallows capital gains treatment on the sale or exchange of depreciable property between related taxpayers as defined in section 1239(b). This section is designed to prevent the immediate payment of a capital gains tax in return for the elimination over a period of years of income taxes on an equivalent amount of ordinary income as a result of the additional depreciation deduction allowable on the increased basis of the transferred property.

Public Comment

The proposed amendments to section 1239 state that a taxpayer and an entity are considered related if there is 80-percent ownership before or immediately after the sale or exchange of depreciable property. This rule does not make any distinction between whether the selling party is the shareholder or the corporation. Additionally, the proposed amendments state that where there is a sale or exchange between two entities, there is relatedness if a shareholder has 80-percent ownership (either actual or constructive ownership) of the transferor before the sale or exchange of depreciable property and the same shareholder has 80-percent ownership (either actual or constructive ownership) of the transferee immediately after the sale or exchange of depreciable property.

The commentator noted that the appropriate time for determining whether a person and a controlled entity are "related persons" when the person sells property to or exchanges property with the entity should be immediately after the sale or exchange of the property. After consideration of this comment, the final regulations provide that when a person sells property to or exchanges property with a controlled entity, the proper time for determining relatedness is immediately after the sale or exchange. Thus, the holding in *Robishaw* v. *United States*, 616 F.2d 507 (Ct. Cl. 1980) is not followed. The commentator further suggested that the appropriate time for determining whether a person and a controlled entity are "related persons" when the entity sells property to or exchanges property with the person should be before the sale or exchange of the property. After consideration of this comment, it has not been adopted since it is believed that abusive situations may result under such a rule. Thus, when a controlled entity sells property to or exchanges property with a person, the time for determining relatedness is immediately before or immediately after the sale or exchange of the depreciable property.

The final regulations also do not adopt the proposed example.

Regulatory Flexibility Act

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of this final regulation is Robert Beatson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation both on matters of substance and style.

List of Subjects in 26 CFR 1.1201-1.1252-2

Income taxes, Capital gains and losses, Recapture.

Adoption of amendments to the regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.1239-1 is amended by redesignating paragraph (c)(3) as (c)(5) and adding new paragraphs (c)(3) and (c)(4). New paragraphs (c)(3) and (c)(4) read as follows:

§ 1.1239-1 Gain from sale or exchange of depreciable property between certain related taxpayers after October 4, 1976.

* * * * *

(c) *Rules of construction.* * * *

(3) *Relationship determination for transfers made after January 6, 1983—taxpayer and an 80-percent owned entity.* For purposes of paragraph (b)(2) of this section with respect to transfers made after January 6, 1983—

(i) If the transferor is an entity, the transferee and such entity are related if the entity is an 80-percent owned entity with respect to such transferee either immediately before or immediately after the sale or exchange of depreciable property, and

(ii) If the transferor is not an entity, the transferee and such transferor are related if the transferee is an 80-percent owned entity with respect to such transferor immediately after the sale or exchange of depreciable property.

(4) *Relationship determination for transfers made after January 6, 1983—two 80-percent owned entities.* For purposes of paragraph (b)(3) of this section, with respect to transfers made after January 6, 1983, two entities are related if the same shareholder both owns 80 percent or more in value of the stock of the transferor before the sale or exchange of depreciable property and owns 80 percent or more in value of the stock of the transferee immediately after the sale or exchange of depreciable property.

* * * * *

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: November 14, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 26603 Filed 11-25-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Freedom of Information Act (5 U.S.C. 552) requires Government agencies to maintain and make available for inspection and copying current indexes that provide identifying information on certain matters issued, adopted, or promulgated after July 4, 1967. The Department of the Navy is complying with this provision by adding Subpart C—Addresses for Requests for Department of the Navy Records and Locations at Which Department of the Navy Records are Available for Public Inspection which is codified at 32 CFR Part 701.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. G.R. Aitken, Office of the Chief of Naval Operations, OP-09B30, Department of the Navy, The Pentagon, Washington, DC 20350-2000, telephone (202) 694-2817.

List of Subjects in 32 CFR Part 701

Freedom of information.

PART 701—[AMENDED]

Accordingly, 32 CFR Part 701 is amended as follows:

1. The authority citation for Part 701 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 93-502, 32 CFR Part 286 (40 FR 8190). Subpart E also issued under 32 CFR Part 196 (40 FR 4911), unless otherwise noted.

2. 32 CFR Part 701 is amended by adding Subpart C to read as follows:

Subpart C—Addresses for Requests for Department of the Navy Records and Locations at Which Department of the Navy Records Are Available for Inspection

Sec.

Subpart C—Addresses for Requests for Department of the Navy Records and Locations at Which Department of the Navy Records Are Available for Public Inspection

§ 701.31 Addresses for requests for Department of the Navy records.

Members of the public should address requests to the Commanding Officer or head of the activity where the record is located. When the official having custody of the record is not known, the request should be addressed to the originating official or the official having primary responsibility for the subject matter involved. The following are the most commonly requested types of records: (If you are unable to determine the official having cognizance over the requested records, send your request for naval matters to the Chief of Naval Operations, (Code 09B30), Pentagon, Washington, DC 20350-2000 and Marine Corps matters to the Commandant of the Marine Corps, HQMC, Navy Department, Washington, DC 20380.)

(a) *Audit Reports.* Send requests for internal audit matters to the Auditor General of the Navy, Navy Department, P.O. Box 1206, Falls Church, VA 22041.

(b) *Chaplain Corps.* Send requests for religious affairs matters to the Chief of Chaplains, Navy Department, Washington, DC 20370.

(c) *Civilian Personnel Records.* (1) Send requests for personnel records of current civilian employees, or those separated from Federal employment less than 30 days, to the employing installation marked to the attention of the civilian personnel officer.

(2) Send requests for individuals formerly employed by the Department of the Navy, or separated from Federal employment for more than 30 days, to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(d) *Contractual/Procurement Records and Related Matters.* (1) Send requests for copies of Navy procurement directives and Defense Acquisition Regulations (DARs) to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(2) Send requests for current contracts to the contracting officer or head of the procurement activity when known. If unknown, submit requests for Navy contracts to the Chief of Naval Operations (OP-09B30), Pentagon, Washington, DC 20350-2000 and Marine Corps contracts to the Deputy Chief of Staff for Installations and Logistics, U.S. Marine Corps, Washington, DC 20380.

(e) *Courts-Martial Records.* (1) Send requests for records of trial by general courts-martial, or special courts-martial which resulted in a bad conduct discharge, or involving commissioned officers to the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332.

(2) Send requests for records of trial by summary courts-martial or special courts-martial not involving a bad conduct discharge to the officer having supervisory authority in the review process.

(f) *Inspector General Records.* (1) Send requests for inspector general inspections, investigations, and related survey matters which are prepared by the Naval Inspector General to the Naval Inspector General, Navy Department, Washington, DC. 20370.

(2) Send requests for those records prepared by inspector generals of other Navy commands to the commander for whom the inspector general records were prepared.

(g) *Investigative records.* (1) Send requests for NIS investigatory records and related matters to the Commander, Naval Security and Investigative Command, Washington, DC 20388.

(2) Send requests for JAG Manual investigative reports to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332.

(3) Send requests for mishap investigative reports to the Commander, Naval Safety Center, Naval Air Station, Norfolk, VA 23511.

(h) *Legal matters.* (1) General Counsel legal matters. Those relating to the acquisition, custody, management, transportation, taxation, and disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof, excepting, however, tort claims and admiralty claims arising independently of contract, and matters relating to the naval petroleum reserves; operations of the Military Sealift

Command, excepting tort and admiralty claims arising independently of contract; the Office of the Comptroller of the Navy; procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the Defense Acquisition Regulations (DARs), and Navy procurement directives, and; industrial security, claims and litigation should be directed to the Office of Counsel of the concerned activity. If unknown, submit to the General Counsel, Navy Department, Washington, DC 20360.

(2) Judge Advocate General legal matters. In addition to military law, all matters except those outside the jurisdiction of the General Counsel should be directed to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332.

(i) *Medical records.* (1) Send requests for inpatient medical treatment records of active duty Navy and Marine Corps personnel and their dependents to the medical treatment facility where the patient is or was being treated. These records are held for two years and then retired to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

(2) Send requests for outpatient medical treatment records of active duty Navy and Marine Corps personnel and their dependents to the military treatment facility attached to the Command at which they are assigned.

(3) Send requests for outpatient medical records of Navy personnel who have been separated (discharged, retired, or deceased) for less than four months to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800. After four months, send requests to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132. Send requests for dependents' outpatient records to the last medical facility where treatment was provided if within two years of sponsor's release/separation from the service. After the two years, send requests to the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63232.

(4) Send requests for outpatient medical records of Marine Corps personnel who have been separated (discharged, retired, or deceased) for less than four months to the Director, Marine Corps Reserve Support Center, 10950 El Monte Street, Overland Park, KS 66211–1408. After four months, send requests to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132. Requests for dependents' outpatient records should be addressed to the last medical facility where treatment was provided if within two years of active duty member's release/separation from the service. After two years, send requests to the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63232.

(5) When the location of a military member or dependent's medical record is not known, send requests to the Commander, Naval Medical Command, Navy Department, Washington, DC 20372.

(6) Send requests for medical records of drilling reservists to the reserve centers where they are assigned.

(7) Send requests for medical records of inactive or retired reservists to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

(8) Civilian employee medical records. Send requests to the medical facility where the person is/was treated. After two years, send requests to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118.

(j) *Military Personnel Records.* (1) Send requests for records of active duty Navy personnel, or those separated (discharged, retired or deceased for up to one year) to the Commander, Naval Military Personnel Command, Navy Department, Washington, DC 20370 and for Marine Corps personnel to the Commandant of the Marine Corps, (Code M), Navy Department, Washington, DC 20380.

(2) Send requests for records of Navy and Marine Corps personnel who have separated (discharged, retired or deceased) for more than one year and inactive reservists to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

(3) Send requests for former officer personnel separated prior to 1902 and former enlisted personnel separated prior to 1885 to the Chief, Military Reference Branch, Military Archives Division, National Archives, Washington, DC 20408.

(4) Send requests for records of drilling reservists to the member's servicing personnel support unit.

(5) Send requests for records of inactive duty reservists who still have an obligation to the Navy to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

(6) Send requests for records of separated reservists who have not retired to the Director, National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

(7) Send requests for records of retired reservists to the Commanding Officer, Naval Reserve Personnel Center, New Orleans, LA 70149–7800.

(k) *Publications.* (1) Send requests for instructions issued under the Department of the Navy's directives issuance system and quarterly subject index thereof (NAVPUBNOTE 5215) to the Director, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19111.

(2) Send requests for Marine Corps directives, publications, and manuals to the Commandant of the Marine Corps, (Code HQS), Navy Department, Washington, DC 20380.

(3) Send requests for military specifications, standards, and handbooks to the Director, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19111.

(l) *Research Records.* Send requests for records regarding basic research and grants to the activity having custody of the record. If unknown, send to the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217.

(m) *Systems Commands.*—(1) *Aeronautical weapons systems.* Send requests for information on aeronautical weapons systems, associated subsystems and related systems and equipment to the Commander, Naval Air Systems Command, Naval Air Systems Command Headquarters, Washington, DC 20361.

(2) *Facilities.* Send requests for information on facilities and land management (design, construction, and maintenance; utilities; housing; and real estate matters) to the Commander, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332.

(3) *Ships.* Send requests for information on ships and ordnance materials to the Commander, Naval Sea Systems Command, Naval Sea Systems Command Headquarters, Washington, DC 20362.

(4) *Space and Naval Warfare.* Send requests for information on development technologies regarding battle force architecture and engineering, space communications, navigation, undersea and ocean surveillance, oceanographic matters, antisubmarine warfare, information transfer systems, and information management systems to the Commander, Space and Naval Warfare Systems Command, Washington, DC 20363–5100.

(5) *Supply.* Send requests for information on naval supply matters to the Commander, Naval Supply Systems

Command, Naval Supply Systems Command Headquarters, Washington, DC 20376 and for Marine Corps supply matters to the Commandant of the Marine Corps. (Code L), HQ USMC, Washington, DC 20380.

(n) *Ships deck logs.* Send requests for ships deck logs originating after 30 June 1945 to the Chief of Naval Operations, (OP–09B37), Pentagon, Washington, DC 20350–2000. Those originated prior to 1945 are held by the Chief, Military Reference Branch, Military Archives Division, National Archives, Washington, DC 20408.

(o) *Supply catalogs.* Send requests for Navy and Federal supply catalogs, master cross reference indexes, and related cataloging publications cataloging, such as M1–1, –2 and –3) to H–3 and Federal manuals for supply cataloging, such as Ml–1, –2 and –3) to the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402–9325.

(p) *Technical reports.* Send requests for unclassified technical reports or publications to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 20402.

§ 701.32 Locations at which Department of the Navy records are available for public inspection.

The following is a list of locations where Navy records are available for public inspection:

(a) *Navy Department Library.* The Navy Department Library is located at the Washington Navy Yard, Building 44, Second floor, U.S. Naval Station, 9th and M Streets, SE., Washington, DC 20374.

(1) *Hours of Operation:* 9 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held:* The library has some 130,000 volumes of information of interest to the Navy, such as naval and general history, international law and diplomacy, naval architecture and shipbuilding, naval customs and traditions, naval shore stations, yards and bases, uniforms, insignia, awards, medals and flags, geography, travel and guide books, aviation, Navy music, etc. Also contained are approximately 5,000 rare book collections. Additionally, the library has an index by subject matter of materials held, i.e., NAVPUBNOTE 5215, Consolidated Subject Index, a quarterly publication which lists instructions originated by Washington Headquarters organizations and Marine Corps directives system quarterly checklist of directives distributed outside Headquarters, U.S. Marine Corps. The library is equipped with desks and study carrels for library users and has specialized devices to facilitate research, such as microfilm reader/printers, copy machines, and outlets for tape recorders.

(b) *Defense Reading Room.* The Defense Reading Room is located in Room 2E165 of the Pentagon, Washington, D.C. 20310. Due to building security, upon arrival at the Pentagon, call 695–3973 to arrange for an escort to the Reading Room.

(1) *Hours of Operation:* 8 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held:* Microfiche copies of indexes and decisional documents regarding Navy Discharge Review Board and Board for Correction of Naval Records proceedings.

(c) *Law Library of the Judge Advocate General.* The law library is located at the Hoffman Building. #2, Room 9S47, 200 Stovall Street, Alexandria, VA 22332–2400

(1) *Hours of Operation:* 9 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held:* The library has published and unpublished decisions of the Navy-Marine Corps Court of Military Review, Navy and Marine Corps directives, miscellaneous superseded manuals, and courts-martial orders and the Navy Department Bulletin.

Dated: November 14, 1986.

Harold L. Stoller, Jr.

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–26056 Filed 11–25–86; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

33 CFR Part 334

Navigation and Navigable Waters; Danger Zones and Restricted Area Regulations; Cooper River, SC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending the regulations which establish a naval restricted area in the Cooper River in the vicinity of the Charleston Naval Shipyard, Charleston County, South Carolina. The amendment enlarges the existing restricted area to make it compatible with the Navy's present use of the area, and provide additional security for the Naval base.

EFFECTIVE DATE: December 26, 1986.

ADDRESS: HQDA, DAEN–CWO–N, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commander, Naval Base, Charleston, South Carolina has requested the Department of the Army amend the regulation in 33 CFR 334.460 (formerly 207.164b). These regulations, which establish a restricted area in the Cooper River in the vicinity of the Charleston Naval Shipyard, were approved on 6 May 1960 and last amended 2 September 1978. The existing restrictions on anchoring, fishing, loitering and photographing remain unchanged and would apply to the enlarged restricted area. The title of the enforcing agency in paragraph (b)(4) is changed to reflect a change in Navy organization.

Notes:

1. The Department of the Army has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is exempt from the general requirements of Executive Order 12291 in accordance with the exemption provided military functions.

2. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 334

Navigation, Waterways, Transportation.

For the reasons set out in the preamble, Title 33, Chapter II, Part 334 is amended as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.460 is amended by revising paragraphs (a)(3) and (b) (4) and (5) as follows:

§ 334.460 Cooper River and Tributaries at Charleston, SC; restricted areas.

(a) *The areas.*

* * * * *

(3) That portion of the Cooper River beginning on the west channel edge at latitude 32°52'06", longitude 79°57'54"; thence to the easterly shore to latitude 32°52'13", longitude 79°57'30"; thence proceeding along the easterly shore to latitude 32°51'30", longitude 79°56'15.5"; thence along the Cooper River to latitude 32°51'01", longitude 79°55'50"; thence to latitude 32°50'52", longitude 79°56'03.5"; thence to latitude 32°51'01",

longitude 79°56'07"; thence to latitude 32°51'19", longitude 79°57'05"; thence to latitude 32°51'33", longitude 79°57'27"; thence to latitude 32°51'48.5", longitude 79°57' 41.5"; thence to latitude 32°52'06", longitude 79°57'54".

* * * * *

(b) *The regulations.*

* * * * *

(4) The regulations in paragraphs (b)(1) and (2) of this section shall be enforced by Commander, Naval Base, Charleston, South Carolina, and such agencies as he/she may designate.

(5) The regulations in paragraph (b)(3) of this section shall be enforced by the Commanding Officer, Naval Ammunition Depot, Charleston, South Carolina, and such agencies as he/she may designate.

Dated: November 12, 1986.

Approved:

Robert K. Dawson,

Assistant Secretary of the Army, (Civil Works).

[FR Doc. 86-26599 Filed 11-25-86; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3089-1]

Amendments to Subparts D, Da, Db, and J; Addition of Method 5B and Method 5F to Appendix A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: These amendments and test methods were proposed in the **Federal Register** on May 29, 1985 (50 FR 21863). This action promulgates: (1) The amendments to the test methods and procedures under § 60.46 of Subpart D and § 60.106 of Subpart J, (2) the amendments to the compliance determination procedures and methods under § 60.48a of Subpart Da and § 60.46b of Subpart Db, and (3) the addition of Method 5B, "Determination of Nonsulfuric Acid Particulate Matter from Stationary Sources," and Method 5F, "Determination of Nonsulfate Particulate Matter from Stationary Sources," to Appendix A of 40 CFR Part 60. These amendments are being made to minimize the measurement of sulfuric acid mist by Method 5 or Method 17 when used to measure particulate matter (PM) after flue gas desulfurization (FGD) systems and fluid catalytic cracking unit (FCCU) catalyst regenerators. This action is necessary because EPA's intent was not to include sulfuric acid when the emission standards for PM were established for these affected facilities.

These methods are being promulgated for the source categories specified here to measure emissions under section 111 of the Clean Air Act, where emission limitations are based on the application of best demonstrated control technology (BDT). In cases where the emission limits are based on ambient air quality considerations, such as under section 110 of the Clean Air Act, and the resultant State implementation plans, it would be appropriate to measure PM emissions using Method 5 or a modified Method 5 which includes material caught in the impingers following the filter.

DATES: Effective November 26, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Summary of Comments and Responses.* This document for the promulgated test methods may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Summary of Comments and Responses for Methods 5B and 5F, EPA-450/3-86-008." This document contains: (1) A summary of all the public comments made on the proposed test methods with the Administrator's response to the comments, and (2) a summary of the changes made to the test methods since proposal.

Docket. Docket No. A-81-05, containing supporting information used in developing the promulgated rule, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. McAlister or Mr. Roger T. Shigehara, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA adopted standards to limit PM from boilers built after 1971 (Subpart D); utility boilers built after 1978 (Subpart Da); and FCCU's built after 1973 (Subpart J). These standards were intended to limit particulate emissions through the use of BDT. The Agency has recognized that the methods which have been available for testing these sources may not accurately assess the performance of the control devices that are being used for PM control. This was noted in the preamble to the new source performance standard (NSPS) for electric utility steam generating units published on June 11, 1979 (44 FR 33580). In the section on performance testing, the Agency stated, "Since technology is not available for the control of sulfuric acid mist, which is condensed in the FGD system, the Administrator does not believe the PM sample should include condensed acid mist. The final regulation, therefore, allows PM testing for compliance between the outlet of the PM control device and the inlet of a wet FGD system. The EPA will continue to investigate revised procedures to minimize the measurement of acid mist by Method 5 or Method 17 when used to measure PM after the FGD system. Since technology is available to control particulate sulfate carryover from an FGD system and the Administrator believes good mist eliminators should be included with all FGD systems, the regulations will be amended to require PM measurement after the FGD system when revised procedures for Method 5 or Method 17 are available." As noted here, mist eliminators can control scrubber liquor droplets which might contain dissolved metal sulfates, but they cannot control the sulfuric acid mist which might form in the stack.

In addition, since EPA promulgated an NSPS for PM emissions from FCCU regenerators on March 8, 1974 (39 FR 9308), EPA has been asked to clarify whether the intent of the emission regulation was to control condensible sulfur trioxide (SO_3) in the gas phase at the operating temperature of the control device along with the "catalyst fines" or "mineral dust."

In the public notice of proposed rulemaking for a revision to the FCCU NSPS (44 FR 60759), EPA stated that Method 5 may collect condensible matter that is not controllable by the best systems of emission reduction. Therefore, a facility employing such systems could be in noncompliance if

significant quantities of such condensibles are present because feed stocks or process conditions are different from those tested to support the NSPS. Method 5 was used in 1971 and 1972 to collect data to support the NSPS. The facilities tested were conventional regenerators equipped with electrostatic precipitators (ESP's) and carbon monoxide boilers. It was further stated that the condensible materials that are present in the gas phase at the control device operating temperature were not intended to be controlled.

As a result of this, the Agency undertook a program to develop test methods which measure PM in a manner consistent with the original standards. Two methods have been developed.

Method 5B is essentially the same as Method 5 except that the samples are collected at 320 °F instead of 250 °F and the samples are heated in a laboratory oven to 320 °F for 6 hours before analysis. Method 5B is applicable to Subpart D, Da, Db, and J sources that are equipped with wet FGD systems.

Method 5F has exactly the same sampling procedure as Method 5B, but the analysis procedure calls for chemical measurement of the water soluble sulfates which are then subtracted from the total sample mass. Method 5F is applicable only to Subpart J sources that do not use wet FGD's.

The intent of these new methods is to ensure that these NSPS reflect the control technologies on which they are based. The EPA recognizes that the emissions of acid mist which are not measured by these methods are measured as PM in the ambient air. Although there may be some exceptions, these methods would generally not be appropriate for emission limits that are based on achieving a particular impact on ambient air quality, for example, in State implementation plans under Section 110 of the Act.

As a result of the development of these two new methods, the following revisions are being made in § 60.46 of Subpart D, § 60.48a of Subpart Da, § 60.46b of Subpart Db, and § 60.106 of Subpart J.

1. The method for determining PM concentration for those Subpart D, Da, Db, and J sources with wet FGD systems is being changed from Method 5 to Method 5B. The method for Subpart J sources without wet FGD systems is being changed from Method 5 to Method 5B or Method 5F. The method for Subparts D, Da, and Db sources without wet FGD systems will continue to be Method 5.

2. The use of Method 17 with the Method 5B analytical procedure is being allowed if Method 17 is used after wet FGD systems, or if the average stack temperature is less than or equal to 160 °C. This procedure, however, could lead to a high bias in the particulate results as all the acid cannot be removed by thermal heating.

3. Paragraph 60.48a(a)(7) is being deleted. Paragraph (7) is no longer needed with the issuance of Method 5B.

II. Public Participation

The amendments and test methods were proposed and published in the **Federal Register** on May 29, 1985 (50 FR 21863). To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed rules, a public hearing was scheduled for July 26, 1985 at the Research Triangle Park, North Carolina, but no one wished to make an oral presentation. The public comment period was from May 29, 1985 to July 31, 1985. Nine comment letters were received concerning issues relevant to the proposed test methods. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed test methods or amendments.

III. Significant Comments and Changes to the Proposed Test Methods

Nine comment letters were received on the proposed test methods and amendments. A detailed discussion of these comments and responses can be found in the background information document which is referred to in the **"ADDRESSES"** section of this preamble. The summary of comments and responses serves as the basis for the revisions which have been made to the test methods and amendments between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The significant comments fell into two categories.

Applicability

Three commenters argued that other sources faced circumstances that were similar to those Subparts D, Da, Db and J sources equipped with wet FGD units and should also be allowed to use Method 5B for determining compliance with particulate matter emission limits.

The development of Methods 5B and 5F was in response to a specific problem. The issue is not simply that Method 5 may measure condensed H_2SO_4 as particulate matter. Rather, the issue is that the potential for condensed H_2SO_4 is greater at these sources now than it was when their emission limits were established because changes in operating conditions have allowed the affected sources to use feed stocks with much higher sulfur content. There was no evidence presented that a similar situation existed for the sources cited by the commenters.

Two commenters thought that it was inappropriate to eliminate the option of sampling particulate matter emissions prior to wet FGD's. These commenters argued that EPA had not demonstrated that there was a consistent relationship between measurements made with Method 5B after a wet FGD and measurements made with Method 5 before a wet FGD.

The original intent of this regulation was to require testing downstream of any FGD unit. Because of concern that condensed sulfuric acid following the FGD would be counted as particulate matter by Method 5, Subpart Da sources were temporarily given the option of testing upstream of the FGD. Method 5B will not measure the condensed sulfuric acid and, therefore, may be used downstream of the FGD unit as originally intended by the regulation. The change in test location does not represent a change in the standard, but merely eliminates a temporary option granted until a method could be developed that would not count condensed sulfuric acid as particulate matter.

In addition, during its development Method 5B was shown to yield particulate matter measurements that were always equal to or less than those measured by Method 5 at the same location. Since the promulgation of Subpart Da, at least three sources equipped with FGD units have conducted compliance tests where the test point was downstream of the FGD unit and the particulate matter was measured using Method 5. All of these sources were found to be in compliance with the particulate matter standard. Because the particulate matter measured by Method 5B is always equal to or less than that measured by Method 5B, these sources would also have been shown to be in compliance if Method 5B had been used to measure the particulate matter. Therefore, we believe it is reasonable to require that sources equipped with FGD units must conduct particulate matter tests downstream of the FGD unit.

Technical

Two commenters were concerned that Method 5F eliminated more than condensed H_2SO_4 from particulate samples because it uses a water extraction procedure to remove water soluble sulfates from the sample.

The use of Method 5F is limited to FCCU's which are not equipped with wet FGD units. We believe that any water soluble sulfates from these sources would be limited to condensed H_2SO_4 or metal sulfates formed from condensed H_2SO_4 in the sampling train. Thus, Method 5F would eliminate only condensed H_2SO_4 from the sample.

One commenter, citing costs as the major factor, thought it was unreasonable to limit the analytical procedure in Method 5F to ion chromatography. This commenter wanted the option of using the barium titration procedure described in Method 6 as an alternative analytical procedure.

At the time of the proposal, we did not have data to show that the titration procedure was an acceptable alternative method. We have recently completed the necessary development work and will propose the titration procedure as an alternative method.

One commenter pointed out that additional blanks should be included in Method 5F. The commenter also suggested that smaller beakers be used when drying the sample to determine the dried residue. Both of these changes have been incorporated into the method.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated test methods and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(a)).

Miscellaneous

This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking revises the test method to which the affected facilities are already subject.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have any economic impact on small entities because no additional test costs are incurred. Any written comments from the Office of Management and Budget and any written EPA responses are available in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation of reference, Intergovernmental relations, Report, Recordkeeping requirements, Petroleum refineries, Electric utility steam generators.

Dated: October 31, 1986.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

For the reasons set forth in the preamble, 40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.46b, paragraphs (d)(1), (d)(2), (d)(2)(i), (d)(2)(ii), (d)(5), (d)(6) are revised and paragraph (d)(2)(iii) is added to read as follows:

§ 60.46b Compliance and performance testing for particulate matter and nitrogen oxides.

* * * * *

(d) * * *

(1) Method 3 is used for gas analysis when applying Method 5, Method 5B, or Method 17.

(2) Method 5, Method 5B, or Method 17 shall be used to measure the concentration of particulate matter as follows:

(i) Method 5 shall be used at affected facilities without wet flue gas desulfurization (FGD) systems; and

(ii) Method 17 may be used at facilities with or without wet scrubber systems provided that the stack gas temperature does not exceed a temperature of 160 °C (320°F). The procedures of sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used after a wet FGD system. Do not use Method 17 after wet FGD systems if the effluent is saturated or laden with water droplets.

(iii) Method 5B is to be used only after wet FGD systems.

* * * * *

(5) For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Method 5, Method 5B, or Method 17 by traversing the duct at the sampling location.

(6) For each run using Method 5, Method 5B, or Method 17, the emission rate expressed in nanograms per joule heat input is determined using:

* * * * *

3. In § 60.46, paragraphs (a)(2), (a)(3), (b), (c), and (f)(3)(ii) are revised to read as follows:

§ 60.46 Test methods and procedures.

(a) * * *

(2) Method 3 for gas analysis to be used when applying Method 5, 5B, 17, 6, 7, 7A, 7C, or 7D.

(3) Method 5, 5B, or 17 for concentration of particulate matter and the associated moisture content as follows: Method 5 is to be used at affected facilities without wet flue gas desulfurization (FGD) systems; Method 5B is to be used only after wet FGD systems; and Method 17 may be used at facilities with or without wet FGD systems provided that the stack gas temperature at the sampling location does not exceed an average temperature of 160 °C (320 °F). The procedures of sections 2.1 and 2.3 of Method 5B may be used with Method 17 only if it is used after wet FGD systems. Do not use Method 17 after wet FGD systems if the effluent gas is saturated or laden with water droplets.

* * * * *

(b) For Method 5, 5B, or 17, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes, and the minimum sampling volume shall be 0.85 dscm (30 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Administrator. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature of 160±14 °C (320±25 °F).

(c) For Methods 6 and 7, 7A, 7C, or 7D the sampling site shall be the same as that selected for Method 5, 5B, or 17. The

sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). For Methods 6 and 7C or 7D, the sample shall be extracted at a constant volumetric flow rate.

* * * * *

(f) * * *

(3) * * *

(ii) For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the same sampling location used for each run of Method 5, 5B, or 17 under paragraph (b) of this section. Method 1 shall be used for selection of the number of oxygen traverse points except that no more than 12 sample points are required.

* * * * *

4. In § 60.48a, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) are revised; paragraph (a)(7) is removed.

§ 60.48a Compliance determination procedures and methods.

(a) * * *

(1) Method 3 is used for gas analysis when applying Method 5, 5B, or 17.

(2) Method 5, 5B, or 17 is used for determining particulate matter emissions and associated moisture content as follows: Method 5 is to be used at affected facilities without wet FGD systems; Method 5B is to be used only after wet FGD systems; and Method 17 may be used at facilities with or without wet FGD systems provided that the stack gas temperature at the sampling location does not exceed a temperature of 160 °C (320 °F). The procedures of sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used after wet FGD systems. Do not use Method 17 after wet FGD systems if the effluent is saturated or laden with water droplets.

(3) For Method 5, 5B, or 17, Method 1 is used to select the sampling site and the number of traverse sampling points. The sampling time for each run is at least 120 minutes and the minimum sampling volume is 1.7 dscm (60 dscf) except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(4) For Method 5 or 5B the probe and filter holder heating system in the sampling train is set to provide an average gas temperature of 160 °C (320 °F).

(5) For determination of particulate emissions, the oxygen or carbon dioxide sample is obtained simultaneously with each run of Method 5, 5B, or 17 by traversing the duct at the same sampling location. Method 1 is used for selection of the number of oxygen or carbon dioxide traverse points except that no more than 12 sample points are required.

(6) For each run using Method 5, 5B, or 17, the emission rate expressed in ng/J heat input is determined using the oxygen or carbon-dioxide measurements and particulate matter measurements obtained under this section, the dry basis Fc-factor and the dry basis emission rate calculation procedure contained in Method 19 (Appendix A).

* * * * *

5. In § 60.106, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 60.106 Test methods and procedures.

(a) * * *

(1) * * *

(i) Method 5B or 5F is to be used to determine particulate matter emissions and associated moisture content from affected facilities without wet FGD systems; only Method 5B is to be used after wet FGD systems.

(ii) * * *

(iii) * * *

(2) For Method 5B or 5F, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times may be approved by the Administrator when process variables or other factors preclude sampling for at least 60 minutes.

* * * * *

6. Appendix A is amended by adding Method 5B and Method 5F as follows:

Appendix A—Reference Methods

* * * * *

Method 5B—Determination of Nonsulfuric Acid Particulate Matter From Stationary Sources

1. *Applicability and Principle.*

1.1 Applicability. This method is to be used for determining nonsulfuric acid particulate matter from stationary sources. Use of this method must be specified by an applicable subpart, or approved by the Administrator, U.S. Environmental Protection Agency, for a particular application.

1.2 Principle. Particulate matter is withdrawn isokinetically from the source using the Method 5 train at 160 °C (320 °F). The collected sample is then heated in the oven at 160 °C (320 °F) for 6 hours to volatilize any condensed sulfuric acid that may have been collected, and the nonsulfuric acid particulate mass is determined gravimetrically.

2. *Procedure.*

The procedure is identical to EPA Method 5 except for the following:

2.1 Initial Filter Tare. Oven dry the filter at 160±5 °C (320 ±10 °F) for 2 to 3 hours, cool in a desiccator for 2 hours, and weigh. Desiccate to constant weight to obtain the initial tare. Use the applicable specifications and techniques of Section 4.1.1 of Method 5 for this determination.

2.2 Probe and Filter Temperatures. Maintain the probe outlet and filter temperatures at 160±14 °C (320±25 °F).

2.3 Analysis. Dry the probe sample at ambient temperature. Then oven-dry the probe and filter samples at a temperature of 160±5 °C (320±10 °F) for 6 hours. Cool in a desiccator for 2 hours, and weigh to constant weight. Use the applicable specifications and techniques of Section 4.3 of Method 5 for this determination.

* * * * *

Method 5F—Determination of Nonsulfate Particulate Matter From Stationary Sources

1. *Applicability and Principle.*

1.1 Applicability. This method is to be used for determining nonsulfate particulate matter from stationary sources. Use of this method must be specified by an applicable subpart of the standards, or approved by the Administrator, U.S. Environmental Protection Agency, for a particular application.

1.2 Principle. Particulate matter is withdrawn isokinetically from the source using the Method 5 train at 160 °C (320 °F). The collected sample is then extracted with water. A portion of the extract is analyzed for sulfate content. The remainder is neutralized with ammonium hydroxide before it is dried and weighed.

2. *Apparatus.*

The apparatus is the same as Method 5 with the following additions.

2.1 Analysis.

2.1.1 Erlenmeyer Flasks. 125-ml, with ground glass joints.

2.1.2 Air Condenser. With ground glass joint compatible with the Erlenmeyer flasks.

2.1.3 Beakers. 250-ml.

2.1.4 Volumetric Flasks. 1-liter, 500-ml (one for each sample), 200-ml, and 50-ml (one for each sample and standard).

2.1.5 Pipets. 5-ml (one for each sample and standard).

2.1.6 Ion Chromatograph. The ion chromatograph should have at least the following components.

2.1.6.1 Columns. An anion separation or other column capable of resolving the sulfate ion from other species present and a standard anion suppressor column. Suppressor columns are produced as proprietary items; however, one can be produced in the laboratory using the resin available from BioRad Company, 32nd and Griffin Streets, Richmond, California. Other systems which do not use suppressor columns may also be used.

2.1.6.2 Pump. Capable of maintaining a steady flow as required by the system.

2.1.6.3 Flow Gauges. Capable of measuring the specified system flow rate.

2.1.6.4 Conductivity Detector.

2.1.6.5 Recorder. Compatible with the output voltage range of the detector.

3. *Reagents.*

The reagents are the same as for Method 5 with the following exceptions:

3.1 Sample Recovery. Water, deionized distilled to conform to American Society for Testing and Materials Specification D1193–74, Type 3, is needed. At the option of the analyst, the $KMnO_4$ test for oxidizable organic matter may be omitted when high

concentrations of organic matter are not expected to be present.

3.2 Analysis. The following are required:

3.2.1 Water. Same as in Section 3.1.

3.2.2 Stock Standard Solution, 1 mg $(NH_4)_2SO_4$/ml. Dry an adequate amount of primary standard grade ammonium sulfate at 105° to 110 °C for a minimum of 2 hours before preparing the standard solution. Then dissolve exactly 1.000 g of dried $(NH_4)_2SO_4$ in water in a 1-liter volumetric flask, and dilute to 1 liter. Mix well.

3.2.3 Working Standard Solution, 25 μg $(NH_4)_2SO_4$/ml. Pipet 5 ml of the stock standard solution into a 200-ml volumetric flask. Dilute to 200 ml with water.

3.2.4 Eluent Solution. Weigh 1.018 g of sodium carbonate (Na_2CO_3) and 1.008 g of sodium bicarbonate ($NaHCO_3$), and dissolve in 4 liters of water. This solution is 0.0024 M Na_2CO_3/0.003 M $NaHCO_3$. Other eluents appropriate to the column type and capable of resolving sulfate ion from other species present may be used.

3.2.5 Ammonium Hydroxide. Concentrated, 14.8 M.

3.2.6 Phenolphthalein Indicator. 3,3-Bis(4-hydroxyphenyl)-1-(3H)-isobenzofuranone. Dissolve 0.05 g in 50 ml of ethanol and 50 ml of water.

4. *Procedure.*

4.1 Sampling. The sampling procedure is the same as Method 5, Section 4.1, except that the probe outlet and filter temperatures shall be maintained at 160° ± 14 °C (320° ± 25 °F).

4.2 Sample Recovery. The sample recovery procedure is the same as Method 5, Section 4.2, except that the recovery solvent shall be water instead of acetone.

4.3 Analysis.

4.3.1 Sample Extraction. Cut the filter into small pieces, and place it in a 125-ml Erlenmeyer flask with a ground glass joint equipped with an air condenser. Rinse the shipping container with water, and pour the rinse into the flask. Add additional water to the flask until it contains about 75 ml, and place the flask on a hot plate. Gently reflux the contents for 6 to 8 hours. Cool the solution, and transfer it to a 500-ml volumetric flask. Rinse the Erlenmeyer flask with water, and transfer the rinsings to the volumetric flask including the pieces of filter.

Transfer the probe rinse to the same 500-ml volumetric flask with the filter sample. Rinse the sample bottle with water, and add the rinsings to the volumetric flask. Dilute the sample to exactly 500 ml with water.

4.3.2 Sulfate (SO_4) Analysis. Allow the sample to settle until all solid material is at the bottom of the volumetric flask. If necessary, centrifuge a portion of the sample. Pipet 5 ml of the sample into a 50-ml volumetric flask, and dilute to 50 ml with water. Prepare a standard calibration curve according to Section 5.1. Analyze the set of standards followed by the set of samples using the same injection volume for both standards and samples. Repeat this analysis sequence followed by a final analysis of the standard set. Average the results. The two sample values must agree within 5 percent of their mean for the analysis to be valid. Perform this duplicate analysis sequence on the same day. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

Document each sample chromatogram by listing the following analytical parameters: Injection point, injection volume, sulfate retention time, flow rate, detector sensitivity setting, and recorder chart speed.

4.3.3 Sample Residue. Transfer the remaining contents of the volumetric flask to a tared 250-ml beaker. Rinse the volumetric flask, and add the rinsings to the tared beaker. Make certain that all particulate matter is transferred to the beaker. Evaporate the water in an oven heated to 105 °C until only about 100 ml of water remains. Remove the beakers from the oven, and allow them to cool.

After the beakers have cooled, add five drops of phenolphthalein indicator, and then add concentrated ammonium hydroxide until the solution turns pink. Return the samples to the oven at 105 °C, and evaporate the samples to dryness. Cool the samples in a desiccator, and weigh the samples to constant weight.

4.4 Blanks.

4.4.1 Filter Blank. Choose a clean filter from the same lot as those used in the testing. Treat the blank filter as a sample, and analyze according to Sections 4.3.1 and 4.3.2.

4.4.2 Water. Transfer a measured volume of water between 100 and 200 ml into a tared 250-ml beaker. Treat the blank as a sample, and analyze according to Section 4.3.3.

5. *Calibration.*

The calibration procedure is the same as Method 5, Section 5, with the following additions:

5.1 Standard Calibration Curve. Prepare a series of five standards by adding 1.0, 2.0, 4.0, 6.0, and 10.0 ml of working standard solution (25 μg/ml) to a series of five 50-ml volumetric flasks. (The standard masses will equal 25, 50, 100, 150, and 250 μg.) Dilute each flask to volume with water, and mix well. Analyze with the samples as described in Section 4.3. Prepare or calculate a linear regression plot of the standard masses in μg (x-axis) versus their responses (y-axis). (Take peak height measurements with symmetrical peaks; in all other cases, calculate peak areas.) From this line, or equation, determine the slope, and calculate its reciprocal which is the calibration factor, S. If any point deviates from the line by more than 7 percent of the concentration at that point, remake and reanalyze that standard. This deviation can be determined by multiplying S times the response for each standard. The resultant concentrations must not differ by more than 7 percent from each known standard mass (i.e., 25, 50, 100, 150, and 250 μg).

5.2 Conductivity Detector. Calibrate according to manufacturer's specifications prior to initial use.

6. *Calculations.*

Calculations are the same as Method 5, Section 6, with the following additions:

6.1 Nomenclature.

C_w = Water blank residue concentration, mg/ml.

F = Dilution factor (required only if sample dilution was needed to reduce the concentration into the range of calibration).

H_s = Sample response, mm for height or mm^2 for area.

H_b = Filter blank response, mm for height or mm^2 for area.

m_b = Mass of beaker used to dry sample, mg.

m_f = Mass of sample filter, mg.

m_n = Mass of nonsulfate particulate matter, mg.

m_s = Mass of ammonium sulfate in the sample, mg.

m_t = Mass of beaker, filter, and dried sample, mg.

m_w = Mass of residue after evaporation of water blank, mg.

S = Calibration factor, μg/mm.

V_b = Volume of water blank, ml.

V_s = Volume of sample evaporated, 495 ml.

6.2 Water Blank Concentration.

$$C_w = \frac{m_w}{V_b}$$

Eq. 5F-1

6.3 Mass of Ammonium Sulfate.

$$m_s = \frac{99(H_s - H_b)}{1000}$$

Eq. 5F-2

6.4 Mass of Nonsulfate Particulate Matter.

$$m_n = m_t - m_b - m_s - m_f - V_s C_w$$

Eq. 5F-3

7. *Bibliography.*

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2. Sawicki, E., J.D. Mulik, and E. Wittgenstein. Ion Chromatographic Analysis of Environmental Pollutants. Ann Arbor, Ann Arbor Science Publishers, Inc. Vol. 1. 1978.

3. Siemer, D.D. Separation of Chloride and Bromide From Complex Matrices Prior to Ion Chromatographic Determination. Analytical Chemistry. *52*(12):1874–1877. October 1980.

4. Small, H., T.S. Stevens, and W.C. Bauman. Novel Ion Exchange Chromatographic Method Using Conductimetric Determination. Analytical Chemistry. *47*(11):1801. 1975.

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[FR Doc. 86-25715 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Ch. 7, App. D

[AIDAR Notice 87-3]

Acquisition Regulation Concerning Direct AID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad

AGENCY: Agency for International Development (AID), IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to clarify several provisions in Appendix D, Direct AID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mrs. Patricia L. Bullock, telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: The AID Acquisition Regulation (AIDAR) is being amended to remove FAR references in the policy text (Paragraphs 1 through 12) of Appendix D, to incorporate guidance on the use of operating expense funds and program funds obligated under a personal services contract, and to make miscellaneous editorial changes.

This AIDAR Notice is not a major rule and is exempt from the requirements of Executive Order 12291 by OMB Bulletin 85–7. The change is not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Notice will not have an impact on a substantial number of small entities or require any information collection, as contemplated by the Regulatory Flexibility Act or the Paperwork Reduction Act respectively.

List of Subjects in 48 CFR Chapter 7, Appendix D

Government procurement.

For the reasons set out in the preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citation for the Appendices to Chapter 7 is unchanged and continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

Appendix D—Direct AID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad.

2. Paragraph 1, *General*, is amended by revising paragraphs (b) (1), (2) and (4) to read as follows (paragraph (b) introductory text is republished):

1. *General*

* * * * *

(b) *Definitions.* For the purpose of this Appendix:

(1) "Personal Services Contract" (PSC) means a contract which establishes an employee-employer relationship.

(2) "Nonpersonal Services Contract" means a contract which establishes an independent contractor relationship.

* * * * *

(4) "Abroad" means outside the United States and its possessions.

* * * * *

3. Paragraph 4, *Policy*, Subparagraph (a) is revised to read as follows:

a. *General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with an individual U.S. citizen or U.S. resident alien for personal services abroad.

(1) *Program funds.* Program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating expense funds.* Operating funds may be obligated for periods not to exceed twenty-four months where necessary and appropriate to the accomplishment of the tasks involved.

4. *Section 11, General Provisions,* Clause 14, Post of Assignment Privileges is amended as follows:

a. The clause date is changed from "(Dec. 1985)" to "(Aug. 1986)"; and

b. Subparagraph (a) concerning health room privileges; in the second sentence the phrase "do not include hospitalization" is corrected to read "do include hospitalization".

5. *Section 11, General Provisions,* Clause 24, Use of Pouch Facilities is amended as follows:

a. The clause date is changed from "(Dec. 1985)" to "(Aug. 1986)"; and

b. Subparagraph (a)(2) concerning pouch privileges; in the first sentence remove the phrase "or U.S. resident alien".

Dated: November 17, 1986.

John F. Owens,

Procurement Executive.

[FR Doc. 86–26596 Filed 11–25–86; 8:45 am]

BILLING CODE 6116–01–M

48 CFR Parts 705 and 706

[AIDAR Notice 87–2]

Acquisition Regulation Concerning Publicizing Mission Procurements

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to re-establish an exception to publicizing requirements for procurements by AID Missions overseas.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, M/SER/PPE, Room 1600I, SA–14, Agency for International Development, Washington, DC 20523. Telephone (703) 875–1534.

SUPPLEMENTARY INFORMATION: AID has authority under 40 USC 474 to modify federal procurement rules when necessary to avoid impairment of the foreign assistance program.

Prior to the issuance of FAC 84–13, procurements by AID Missions overseas were generally exempt from synopsizing in the Commerce Business Daily by FAR 5.201(b). FAC 84–13 restricted that exception to Defense agencies where only local sources are solicited.

On June 25, 1986, AID notified the Office of Federal Procurement Policy, OMB (OFPP) and the Small Business Administration (SBA) of its intention to exercise the authority of 40 USC 474 to re-establish the publicizing exception for overseas procurements which had been provided under the FAR until the issuance of FAC 84–13. OFPP and SBA replied that they had no objection, but suggested that we model our exception on FAR 5.202(a)(12).

Accordingly, we are amending the AIDAR to re-establish the overseas publicizing exception in consideration of the coverage now provided in FAR 5.202(a)(12). At the same time, we are deleting related coverage at AIDAR 706.201–70 which has become obsolete.

We consider this to be an administrative amendment, not substantively affecting AID's long standing policy and practice concerning the publicizing of overseas procurements. Therefore, the change is not considered a major rule, subject to FAR 1.301 or 1.5. This Notice will not have an impact on a substantial number of small entities, nor will it require any information collection, as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act, respectively.

List of Subjects in 48 CFR Parts 705 and 706

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 705 and 706 are revised to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR Part 1979 Comp., p. 435; 40 U.S.C. 474.

PART 705—PUBLICIZING CONTRACT ACTIONS

Subpart 705.2—Synopsis of Proposed Contract Actions

2. Section 705.202 is revised to read as follows:

705.202 Exceptions.

(a) [Reserved]

(b) The head of the Agency for International Development has determined in writing, after consultation with the Administrators for Federal Procurement Policy and the Small Business Administration that advance notice is not appropriate or reasonable for:

(1) Contract actions described in AIDAR 706.302–70.

(2) Contract actions of $100,000 or less by an AID Mission made and performed outside of the United States, its possessions, or Puerto Rico, where only local sources are solicited. (For purposes of this paragraph, "local source" is any firm, organization, or individual present in the cooperating country.)

PART 706—COMPETITION REQUIREMENTS

Subpart 706.2—[Removed]

3. Subpart 706.2 is removed.

Dated: November 17, 1986.

John F. Owens,

Procurement Executive.

[FR Doc. 86–26595 Filed 11–25–86; 8:45 am]

BILLING CODE 6116–01–M

Proposed Rules

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

Prepayment of REA Guaranteed Federal Financing Bank Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Chapter XVII by adding Part 1786, Prepayment of REA Guaranteed Federal Financing Bank Loans. The new part establishes policies and procedures to implement the provisions of Section 306(a) of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) (the "RE Act"). On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) (the "1986 Act") was enacted. The 1986 Act created two new sections of the RE Act, (1) Section 306(A) dealing with the prepayment of certain loans held by the Federal Financing Bank ("FFB"), a wholly-owned government instrumentality under the supervision of the Secretary of the Treasury, and guaranteed by REA; and (2) section 306(B) relating to the sale or prepayment of REA direct or insured loans. These proposed regulations will implement section 306(A) of the RE Act.

Section 306(A) establishes conditions under which REA guaranteed FFB loans may be prepaid by borrowers by paying the outstanding principle due. It requires the Administrator of REA to establish eligibility criteria to ensure that $2.0175 billion of prepayments are permitted during FY 1987 and such prepayment activity is directed to those cooperative borrowers in the greatest need of the benefits associated with prepayment. Additionally, section 306(A) provides that, after the cumulative amount of net proceeds from prepayments for FY 1987 exceeds $2.0175 billion, a borrower will not qualify for prepayment if, the Secretary of the Treasury determines that such prepayment would adversely affect the operation of the FFB.

DATES: Comments must be received on or before December 11, 1986.

ADDRESS: Comments may be mailed to the Rural Electrification Administration, Attention: Laurence V. Bladen, Room 4064, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, telephone number (202) 382–1265.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby proposes to amend 7 CFR Chapter XVII by adding a new past concerning the prepayment of FFB indebtedness.

This action has been reviewed in accordance with Executive Order 12291, Federal Regulations. It will not: (1) Have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq. (1976)] and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Section 1011(c) of the 1986 Act directs the Secretary of Agriculture to issue regulations within 60 days of enactment of the 1986 Act to implement the prepayment of FFB loans. In order to meet this statutory deadline and still provide for a review and comment period on the proposed rule, the comment period has been shortened to 15 days.

Background

Prior to enactment of Pub. L. 99–349 and Pub. L. 99–509 borrowers wishing to prepay their FFB loans had to comply with the provisions of the notes evidencing their loans which the general required a prepayment premium. Section 306(A) permits a REA-financed electric or telephone system to prepay the loan (or any loan advance there under) by paying the outstanding principal balance due on the loan (or advance), if:

(a) The loan was outstanding on July 2, 1986;

(b) Private capital, with the existing loan guarantee, is used to replace the loan; and

(c) The borrower certifies that any savings from such prepayment will be passed on to its customers or used to improve the financial strength of the borrower in cases of financial hardship.

No sums in addition to the payment of the outstanding balance may be charged as a result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund, or REA.

Section 306(A) of the RE Act provides that except for $2.0175 billion of prepayments during FY 1987, a borrower will not qualify for prepayment if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

Section 306(A) requires the Administrator of REA to establish eligibility criteria to ensure that the $2.0175 billion of permitted loan prepayment activity during FY 1987 contemplated by section 306(A) will be directed toward those cooperative borrowers in greatest need of the benefits associated with prepayment. The 1986 Act also requires the Administrator to issue requlations to facilitiate prepayments under section 306(A).

List of Subjects in 7 CFR Part 1786

Administrative practice and procedure, Electric utilities, Telephone utilities, Guaranteed loan program—energy, Guaranteed loan program—telephony.

In view of the above, REA proposes to amend 7 CFR Chapter XVII by adding Part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED FEDERAL FINANCING BANK LOANS

Sec.
1786.1 Purpose.
1786.2 Policy.
1786.3 Definitions
1786.4 Qualifications.
1786.5 Eligibility for prepayment under section 306(A)(d)(2).
1786.6 Application procedure.
1786.7 Settlement procedure.
1786.8 Forms.
1786.9 Access to records of lenders.
1786.10 Loss, theft, destruction, mutilation or defacement of REA Guarantee.
1786.11 Other prepayments.

Authority: 7 U.S.C. 901–950b; Title 1, Subtitle B, Pub. L. 99–509; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§1786.1 Purpose.

This subpart contains the general regulations of the Rural Electrification Administration (REA) for implementing section 306(A) of the Rural Electrification Act of 1936, as amended (RE Act) permitting, in certain circumstances, loans made by the Federal Financing Bank (FFB) and guaranteed by the Administrator of REA to be prepaid by REA borrowers by paying the outstanding principal balance due on the FFB Loan, using private capital with the existing REA guarantees.

§ 1796.2 Policy.

It is the policy of REA to facilitate the prepayment of FFB loans in accordance with section 306(A) of the RE Act, to ensure that $2.0175 billion of statutorily authorized prepayments during FY 1987 be allocated on the basis of greatest need. Furthermore, it is REA policy to carry out the objectives of the prepayment program without increasing the loan guarantee exposure to REA or the administrative burden on REA.

§ 1786.3 Definitions.

For the purposes of this Part:

"Administrator" means the Administrator of REA.

"Documentation" means all or part of the agreements relating to a prepayment under this Part, irrespective of whether REA is a party to each agreement.

"Existing Loan Guarantee" means a guarantee of payment issued by REA to FFB pursuant to the RE Act on or before July 2, 1986.

"Fees" means any fees, costs or charges, incurred in connection with obtaining the Private Loan used to make the prepayment including without limitation, accounting fees, filing fees, legal fees, printing costs, recording fees, trustee fees, overheads of the borrower, underwriting fees, capital stock purchases, or other equity investment requirements of the Lender.

"FFB" means the Federal Financing Bank, an instrumentality and wholly owned corporation of the United States.

"FFB Loan" means one or more advances on or before July 2, 1986, by FFB on a promissory note executed by a borrower and guaranteed by REA pursuant to section 306 of the RE Act (7 U.S.C. 936).

"Guarantee" means the endorsement, in the form specified by REA which is executed by the Administrator.

"Lender" means the organization making and Servicing the Private Loan which is to be guaranteed under the provisions of this Part and used to prepay the FFB loan. The term "Lender" does not include the FFB, or any other Government agency.

"Loan Guarantee Agreement" means the written contract by and among the Lender, the borrower and the Administrator setting forth the terms and conditions of a Guarantee issued pursuant to the provisions of this Part.

"Mortgage" means the mortgage and security agreements by and among the borrower and REA, as from time to time supplemented, amended and restated.

"Private Loan" means the loan which is to be guaranteed under the provisions of this Part and used to prepay an FFB Loan.

"Private Note" means the note, bond or other obligation evidencing indebtedness created by the Private Loan.

"REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

"RE Act" means the Rural Electrification Act of 1936 (7 U.S.C. 901–950b), as amended.

"Service" or "Servicing" means the following activities to be performed by the Lender:

(a) The billing and collecting of the Private Loan payments from the borrower;

(b) Notifying the Administrator promptly of any default in the payment of principal and interest on the Private Loan and submitting a report, as soon as possible thereafter, setting forth the Lender's views as to the reasons for the default, how long the Lender expects the borrower to be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position;

(c) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, Loan Guarantee Agreement, or related security instruments, or conditions of which the Lender is aware which might lead to nonpayment, violation or other default; and

(d) Such other activities as may be specified in the Loan Guarantee Agreement.

§ 1786.4 Qualifications.

(a) *Borrowers.* To qualify to prepay an FFB Loan pursuant to this Part, the borrower must:

(1) Demonstrate that the FFB Loan was outstanding on July 2, 1986;

(2) Prepay the FFB Loan using private capital;

(3) Certify that any savings resulting from such prepayment will be passed on to its customers, or used to improve the financial strength of the borrower in cases of financial hardship; and

(4) Be eligible to prepay pursuant to section 306(A)(d)(2) of the RE Act in accordance with § 1786.5 of these regulations.

(b) *Lenders.* To participate in a borrower's prepayment of an FFN loan pursuant to this Part, the Lender must:

(1) Be a private legally organized lending agency;

(2) Have capital and surplus of at least $50 million or be supervised by the Farm Credit Administration; and

(3) Have the capability to adequately Service the Private Loan. A qualified Lender may participate out up to 90 percent of each Private Loan to entities other than a Government agency, the borrower, or an affiliate of the borrower, provided that such participation shall be on terms and conditions satisfactory to the Administrator.

(c) *Private Loans.* Private Loans, the proceeds of which are used exclusively to prepay FFB Loans, shall be eligible for a Guarantee under this Part. With respect to the prepayment of any one FFB Loan, the Administrator may endorse Guarantees on not more than three Private Notes evidencing Private Loans. Private Loans and Private Notes shall comply with the following:

(1) The principal amount of the Private Note may not exceed the outstanding principal balance of the FFB Loan being prepaid.

(2) The Private Note shall bear interest at a fixed interest rate which shall be less than the weighted average interest rate on the FFB Loan being prepaid.

(3) Principal payments shall commence on the first payment date following the closing of the Private Loan and shall be made either quarterly, semiannually, or annually.

(4) The Private Note shall provide for scheduled principal amortization at an

annual rate not less than the annual amortization rate of the FFB Loan. The Private Note shall not provide for balloon or bullet payments.

(5) The term of the Private Note shall not exceed the shorter of (i) 34 years from the last day of the calender year in which the first advance of funds was made under the FFB Loan or (ii) the final maturity date of the FFB Loan.

(6) The Private Note shall not provide for deferments of interest.

(7) The Private Note shall not be directly or indirectly part of a transaction the income of which is excluded from gross income for the purposes of Chapter I of the Internal Revenue Code of 1954 as amended by the Tax Reform Act of 1986.

(8) The Private Note shall not be transferrable or assignable except (i) with the written approval of the Administrator or (ii) as an undivided pro rata interest in a pool of obligations no more than 80 percent of which (on a par value basis at any time over the life of the pool) may be made up of obligations guaranteed by the Administrator pursuant to the RE Act. The remainder of the pool shall be made up of obligations which shall not be guaranteed, collateralized or secured in any manner whatsoever, in whole or in part, directly or indirectly by an obligation of the United States Government or any of its agencies. In considering whether to approve a transfer or an assignment, the Administrator with the concurrence of the Secretary of the Treasury may consider whether the transaction is so structured as to ensure that the transfer or assignment will not unreasonably compete with the marketing of obligations of the United States.

(9) Neither the principal of nor interest on the Private Note shall include amounts attributable to Fees associated with the Private Loan. The borrower, subject to the approval of REA, may finance the Fees with the proceeds of a loan. Such a loan will not be guaranteed by REA nor will REA share mortgage security to enable another lender to obtain security for such a loan to the borrower.

(10) Private Loans and Private Notes shall otherwise be in form and substance satisfactory to the Administrator.

§ 1786.5 Eligibility for prepayment under section 306(A)(d)(2).

(a) *Borrowers.* To be eligible to prepay under section 306 (A)(d)(2) of the RE Act, the borrower must be a cooperative-type organization and be in the greatest need of the benefits associated with prepayment. The determination of eligibility rests solely within the discretion of the Administrator. In making the determination of eligibility, the Administrator will consider the following criteria:

(1) Whether the borrower's financial condition is such that the borrower will not be able to meet the financial tests set forth in its Mortgage;

(2) Whether the borrower is in default or near default on interest or principal payments due on loans made or guaranteed by REA, and is making a good faith effort to increase rates and reduce costs to avoid default;

(3) Whether the borrower is participating in a work out or debt restructuring plan with REA; and

(4) Whether the borrower received the approval of the Secretary of the Treasury to prepay FFB loans pursuant to the "Interim Regulations Governing Prepayments of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration", 31 CFR Part 16, 51 FR 28810, August 12, 1986.

(b) *Amounts of Loans.* The amounts of a borrower's FFB Loans that are eligible to be prepaid may be restricted to advances with a long-term maturity date and to those advances with an interest rate greater than 10.0 percent per annum.

(c) *Adverse Effect on FFB.* The Secretary of the Treasury has determined pursuant to section 306(A)(c)(1) of the RE Act that par prepayments of FFB Loans have an adverse effect on the operation of the FFB. Consequently no par prepayments will be permitted under section 306(A) in addition to the $2.0175 billion determined to be eligible under section 306(A)(d)(1) except where the Administrator recommends that a borrower otherwise determined to be eligible based on greatest need be allowed to prepay all of its long-term FFB Loans with an interest rate greater than 10.0 percent per annum rather than part of such FFB Loans.

§ 1786.6 Application procedure.

(a) *Exception.* Any borrower that received the approval of the Secretary of the Treasury to prepay FFB loans pursuant to the "Interim Regulations Governing Prepayments of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration", 31 CFR Part 16, 51 FR 28810, August 12, 1986, shall be deemed to have complied with the Application Procedure set forth in this § 1786.6. Any such borrower shall be subject to and shall comply with all other provisions of this Part.

(b) *Applications.* Each application to make a prepayment pursuant to this Part shall be received by the Area Director not less than 30 business days prior to the projected settlement date for the Private Loan and shall be on such forms as REA may prescribe. The application shall provide among other matters the following:

(1) Borrower's REA designation.

(2) Borrower's name and address.

(3) Listing of each FFB Loan advance to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding balance.

(4) Evidence that the borrower meets the qualification provisions of § 1786.4(a) of these regulations.

(5) A certification of the chief executive officer of the borrower stating that, "Any savings from the prepayment of Federal Financing Bank Loan puruant to section 306(A) of the Rural Electrification Act of 1936, as amended [7 U.S.C. 936(A)] will be passed on to the customers of (insert the corporate name of the borrower) or used to improve the financial strength of (insert the corporate name of the borrower) in cases of financial hardship."

(6) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting REA approval of the prepayment.

(7) Evidence supporting its application for eligibility under § 1786.5 of this Part, and a 10-year financial forecast of the borrower based on the proposed interest rate and amortization terms of the Private Loan

(8) Evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates will not order a reduction in the borrower's revenue requirements as a result of the prepayment.

(9) Lender's proposal for the Private Loan.

(10) Evidence of the Lender's qualifications.

(11) Estimated/expected interest rate.

(12) Proposed amortization schedule.

(13) Plans for marketing the Private Loan.

(14) Estimate of Fees, and expenses, including any taxes.

(15) Servicing entity's name and address.

(16) Evidence that the borrower has received all approvals which can be obtained at the time of application and which are required under Federal or state law, loan agreements, security

agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(c) *Notifications.* If a borrower's application has been approved, the Administrator will promptly notify the borrower, the Lender and FFB to that effect. If not approved the Administrator will promptly notify the borrower.

§ 1786.7 Settlement procedure.

(a) *General.* Private Loan settlements in connection with prepaying FFB Loans pursuant to this Part shall be conducted in accordance with the provisions of this section.

(b) *Settlement Date.* When REA is satisfied with the Documentation, the parties will schedule a settlement date. The Private Loan will be settled and the Guarantee delivered on a date and time mutually agreed upon among the parties not earlier than ten business days after receipt by REA of all final Documentation. REA reserves the right to limit the aggregate dollar amount of and/or the number of prepayments or settlements that take place on any given day.

(c) *Place of Settlement.* All Private Loan settlements will take place in Washington, DC, at a location of the borrower's choosing.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to REA through the Department of the Treasury account at the Federal Reserve Bank of New York in an amount sufficient to pay the outstanding principal of the FFB Loan plus accrued interest from the last payment date to and including the settlement date.

(e) *Substitute Note.* In the event that a borrower does not prepay all FFB Loans evidenced by the same promissory note, the borrower will execute and deliver a substitute note to evidence its obligation to pay in accordance with its terms the remaining FFB Loans.

(f) *Documentation.* The following executed documents, opinions and material shall be delivered at the settlement:

(1) The Private Note.

(2) The Guarantee.

(3) The Loan Guarantee Agreement.

(4) Copy of the Private Loan agreement between the Lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the Mortgage.

(7) An approving opinion of the borrower's legal counsel to the effect that the Private Note is a valid and legally binding obligation of the borrower which is secured under the Mortgage, and the priority of the Mortgage, as amended pursuant to paragraph (f)(6) of this section, remains undisturbed. In the event that the borrower delivers a substitute note as required by section (f) of this section then a similar conclusion concerning such substitute note shall be contained in the opinion required under this subparagraph.

(8) An approving opinion of the Lender's legal counsel to the effect that the Loan Guarantee Agreement is a valid and legally binding obligation of the Lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other Documentation required by the Lender.

(11) Copies of any other Documentation required by REA to ensure that the Private Loan is adequately secured.

§1786.8 Forms.

(a) Guarantees and Loan Guarantee Agreements executed by REA pursuant to this Part will be on forms prescribed by REA. Such forms will include, without limitation, additional details on Servicing, procedures for notifying REA of a default, the manner for requesting payment on a Guarantee.

(b) The Loan Guarantee Agreement shall provide REA with the right to accelerate the Private Loan in the event of a default by the borrower and shall provide the Lender with no more than 10 years of call protection.

(c) REA may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to § 1786.6(b)(5).

§ 1786.9 Access to records of lenders.

Upon request by REA the Lender will permit representatives of REA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the Lender pertaining to REA guaranteed loans. Such inspection and copying may be made during regular office hours of the Lender or any other time the Lenders and REA find convenient.

§ 1786.10 Loss, theft, destruction, mutilation, or defacement of REA guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the REA Deputy Administrator-Program Operations is authorized on behalf of REA to issue a replacement guarantee(s) for one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the Lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a Guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the Lender, or holder, the Lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to REA for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms.

(ii) Legal name and address of lender of record.

(iii) Capacity of person certifying.

(iv) Full identification of the Guarantee, including the name of the borrower, date of the Guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the Guarantee.

(vi) The Lender or holder, shall present evidence demonstrating current ownership of the Guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to REA (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to REA shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company

holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Electrification Administration. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save REA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 1786.11 Other prepayments.

Nothing contained in this Part shall prohibit a borrower from making prepayments of FFB Loans in accordance with the terms thereof.

Dated: November 21, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-26696 Filed 11-24-86; 3:54 pm]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-211-AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspections and replacement, if necessary, of certain flap ball screwjack no-back assemblies on certain Airbus Industrie Model A300 B2 and B4 series airplanes. There have been reports of excessive wear of the carbon friction discs in the screwjack no-back assemblies. Excessive wear can cause the screwjack to become reversible and lead to an asymmetrical flap condition, which could result in a partial loss of controllability.

DATES: Comments must be received on or before January 19, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-211-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-211-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The French Civil Aviation Authority (DGAC), in accordance with the provisions of an existing bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Model A300 series airplanes.

There have been a number of reports of excessive wear of the carbon friction disc in certain flap screwjack no-back assemblies. This wear can cause the screwjack to become reversible, which can lead to flap asymmetry and partial loss of controllability of the airplane. Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984, has been issued, which describes a jackhead backlash check to determine no-back condition, and describes procedures for flap screwjack replacement, if necessary. The DGAC has issued a Consigne de Navigabilité which mandates compliance with the service bulletin.

Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984, describes a certain Modification of the flap screwjack assemblies, Modification AI 5240, which corrects the unsafe condition.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require screw-to-jackhead axial backlash checks of certain flap screwjack no-back assemblies, and ball screwjack replacement, if necessary, in accordance with Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984. Modification of the flap ball screwjack assemblies in accordance with Modification AI 5240, as described in Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984, would constitute terminating action for the requirements of the AD. (This amendment would not apply to airplanes with Modification AI 5240 already installed.)

It is estimated that 34 airplanes of U.S. registry would be affected by this AD, that it would take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $69,360.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A copy of a

draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in any category, equipped with the flap ball screwjack no-back mechanisms, listed in Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984, which have not been modified in accordance with Modification AI 5240 as described in Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984.

To prevent an asymmetric flap condition due to excessive wear of the carbon friction disc in the screwjack no-back assemblies, accomplish the following prior to the accumulation of 13,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, unless previously accomplished:

A. Perform a jackhead axial backlash measurement on affected flap ball screwjacks in accordance with the accomplishment instructions of Airbus Industrie Service Bulletin A300-27-172, dated April 10, 1984.

B. Repeat the measurement required by paragraph A., above, at the following intervals:

1. If the backlash is less than or equal to 0.331 mm, prior to 3,000 landings after the last measurement.

2. If the backlash is more than 0.331 mm but less than or equal to 0.407 mm, prior to 2,000 landings after the last measurement.

3. If the backlash is more than 0.407 mm, but less than 0.560 mm, prior to 1,000 landings after the last measurement.

C. Replace the flap ball screwjack within the next 250 landings when a measurement required by paragraph A. or B., above, indicates the backlash is greater than or equal to 0.560 mm.

D. Incorporation of Airbus Industrie Modification AI 5240, described in Airbus Industrie Service Bulletin A300-27-173, dated May 2, 1984, constitutes terminating action for the requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-26580 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-213-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, that requires an inspection for loose or failed bolts used for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surfaces. The service bulletin, referenced in the applicability statement of the AD, omitted 13 airplanes from the effectivity list. This proposed action would expand the applicability of the AD to include the additional affected airplanes, and ensure proper inspection of those airplanes.

DATES: Comments must be received on or before January 19, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-213-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The service bulletin specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-213-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 86-18-06, Amendment 39-5386 (51 FR 28061; August 5, 1986), to require inspection for loose or failed bolts used for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surfaces on certain Boeing Model 747 series airplanes in accordance with Boeing Service Bulletin 747-57A2234, dated February 21, 1986. The AD was made applicable to the airplanes listed in that service bulletin.

That service bulletin mistakenly excluded 13 airplanes from the

effectivity listing of the service bulletin. As a result of discovering this error, Boeing has issued Alert Service Bulletin 747–57A2234, Revision 1, dated October 16, 1986, which adds those 13 airplanes to the effectivity listing.

The revised service bulletin also contains minor editorial revisions which merely serve to clarify the accomplishment instructions, and have no additional economic impact on operators.

Since the situation that required issuance of AD 86–18–06 is likely to exist or develop on other airplanes of the same type design, the FAA is proposing to amend the applicability of the existing airworthiness directive to include the additional 13 airplanes.

It is estimated that 2 airplanes of U.S. Registry would be affected by this amendment, that it would take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $3,360.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 86–18–06, Amendment 39–5386 (51 FR 28061; August 5, 1986), by revising the applicability statement to read as follows:

Boeing: Applies to all Model 747 series airplanes listed in Boeing Alert Service Bulletin 747–57A2234, Revision 1, dated October 16, 1986, certificated in any category. To detect loose or broken bolts for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surface, accomplish the following, unless already accomplished.

Issued in Seattle, Washington, on November 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–26581 Filed 11–25–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–CE–59–AD]

Airworthiness Directive; Helio Models H–700 and H–800 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Helio Models H–700 and H–800 airplanes. Reports of delamination and failure of the composite material landing gear legs on Models H–700 and H–800 airplanes have been received. This AD would require inspection of the composite material main landing gear legs for delamination and replacement of delaminated gear legs with metallic legs per Supplemental Type Certificate (STC) SA2171CE. This action is necessary to prevent failure of a landing gear leg and possible loss of the airplane.

DATES: Comments must be received on or before January 1, 1987.

ADDRESSES: Copies of STC SA2171CE applicable to this AD may be obtained from Clarence H. Brent, P.O. Box 486, Pittsburg, Kansas 66762, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–59–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, ACE–120W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the reglatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–CE–59–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There has been one accident and one incident involving the composite main landing gear legs on Helio Models H–700 and H–800 airplanes. A Helio Model H–800 was involved in an accident when one of the gear legs failed during a landing. In the second case, a Model H–700 was found with a wing sagging. The cause was delamination of one of the main landing gear legs. Analysis established that the most likely cause of delamination was shear failure due to bolt tipping. Although redesign of the attachment of the gear legs to the fuselage and the gear leg to the axle assembly to alleviate the bolt tipping is a possibility, it is not likely as the manufacturer is no longer in business. The only fix when one gear has delaminations is to replace both landing gear legs with metal parts per STC SA2171CE.

Since the condition described is likely to exist or develop in other Helio Models H–700 and H–800 airplanes of

the same design, the AD would require inspection of the main landing gear legs for delamination and replacement of both legs per STC SA2171CE if either leg has delamination. The FAA has determined there are approximately 18 airplanes affected by the proposed AD. A cost of $30 per airplane per year is estimated to conduct the required inspection. Installation of STC SA2171CE, if required, would cost approximately $3000 per airplane. Since the cost of replacing failed or unserviceable parts is not included in the total cost computation for purposes of classifying a rulemaking action in accordance with Executive Order 12291, the total estimated cost to the private sector for this action is $540 annually for the inspections.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Helio: Applies to Models H-700 and H-800 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated in the body of the AD after the effective date of this AD, unless previously accomplished.

To assure airworthiness of the composite main landing gear legs, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD and each 100 hours time-in-service thereafter, remove landing gear fairings if installed and visually inspect the edges of the composite main landing gear legs for evidence of delamination. Delamination is evidenced by longitudinal splitting between the fiberglass plies. This could occur anywhere along the span of the landing gear leg. If any delamination is found prior to further flight, install new right and left landing gear legs in accordance with STC SA2171CE.

(b) If, in between the inspections required in paragraph (a) above, it is observed that the wings do not appear level, or one side of the airplane appears to be drooping, prior to further flight, conduct the inspections and replacement if necessary, as specified in paragraph (a) of this AD.

(c) The inspection required in paragraphs (a) and (b) are no longer required after STC SA2171CE has been incorporated.

(d) Ferry permits issued in accordance with FAR 21.197 and equivalent methods of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Clarence H. Brent, P.O. Box 486, Pittsburg, Kansas 66762; or the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, MO 64106.

Issued in Kansas City, Missouri, on November 17, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-26586 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 86-ANE-38]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-3A, -7, -7A, -7AH, -7H, -7F, -7J, and -20 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require modification of the sixth stage turbine inner airseal (IAS) assembly in accordance with Revision 5 of PW Service Bulletin (SB) 4835. It would also require a one time visual and fluorescent penetrant inspection (FPI) and removal, if necessary, of IAS assemblies that have been modified in accordance with Revision 3, or earlier revisions of the SB. The proposed AD is needed to prevent an uncontained engine failure.

DATES: Comments must be received on or before January 27, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-38, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 86-ANE-38".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable SB and section of the Engine Manual may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB and of the appropriate section of the engine manual is contained in Rules Docket Number 86-ANE-38, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the

substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86–ANE–38". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that there have been four sixth stage IAS ruptures in-service to date. Additionally, investigation of a recent uncontained engine failure indicates that the sixth stage IAS ruptured and liberated engine parts which penetrated a wing fuel tank inspection port. The post modification inspection requirements of PW SB 4835, Revision 3, or earlier revisions of the same SB, were insufficient to detect all cracks on the IAS. Cracks were found on failed IAS which had been modified and inspected previously in accordance with the above requirements. The inspection requirements have since been improved by the addition of a wet abrasive blast process to expose cracks that could otherwise be concealed by corrosion. IAS on which the requirements of PW SB 4835, Revision 4, or later revision of the same SB, have been incorporated are not subject to this AD.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require modification of certain IAS assemblies in accordance with the requirements of PW SB 4835, Revision 5, dated September 27, 1983. It will also require a one time visual and FPI of IAS assemblies that have been modified per Revision 3, or earlier revisions of the same SB, at the next low pressure turbine (LPT) module shop visit.

Conclusion

The FAA has determined that this proposed regulation involves approximately 1,806 engines at an approximate total cost of $66,800. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the proposed rule affects only operators using Boeing 747 and McDonnell Douglas DC–10 aircraft in which the JT9D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, and –20 series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent a sixth stage turbine inner airseal (IAS) rupture that can cause uncontained engine failure, accomplish the following:

(a) Modify within the next 500 cycles in service after the effective date of this AD, sixth stage IAS assemblies Part Numbers (P/N) 751879, 660178, 661387, 667924, 677871, 704516, and 751881 in accordance with the Accomplishment Instructions contained in PW Service Bulletin (SB) 4835, Revision 5, dated September 27, 1983.

(b) Wet abrasive blast, visually inspect, and fluorescent penetrant inspect sixth stage IAS assemblies P/N 774836, 774827, 774829, 774825, 774831, 774834, and 774838 that have been reworked in accordance with the requirements of Revision 3, or an earlier revision of PW SB 4835, at the next low pressure turbine (LPT) module shop visit after the effective date of this AD, in accordance with the requirements of Paragraph 4E. Inspection 01, Section 72–52–06, of the Engine Manual P/N 646028, Revision 74, or FAA approved equivalent.

(c) Remove from service, prior to further flight and replace with serviceable parts any sixth stage IAS assemblies found cracked when accomplishing paragraph (a) or (b) above.

Note.—For the purpose of this AD, an LPT module shop visit occurs when the LPT module rotor is removed from the case and vane assembly.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SB and the appropriate section of the Engine Manual identified and described in this document.

Issued in Burlington, Massachusetts, on November 18, 1986.

William H. Williams, Jr.,

Acting Director, New England Region.

[FR Doc. 86–26585 Filed 11–25–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket Number 83–ANE–5]

Airworthiness Directives; Rolls-Royce plc (R–R) (Formerly Rolls-Royce Ltd.) Dart Mks. 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, and 550 Series Turboprop Engines and All Variants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD) which requires inspection and overhaul of propeller low torque switches on certain R–R Dart turboprop engines. The proposed AD would supersede AD 77–20–04 R1, Amendment 39–4639 (48 FR 19161), by imposing a life limit on propeller low torque switches. The proposed AD is needed to prevent cracking of the snap diaphragm in the switch, which could delay propeller auto-feathering and thereby affect aircraft controllability.

DATES: Comments must be received on or before January 27, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England

Region, Office of the Regional Counsel, Attention: Rules Docket Number 83–ANE–5, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 83–ANE–5".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service bulletin (SB) may be obtained from Rolls-Royce plc, East Kilbride, Attn: Dart Engine Service Manager, Glasgow G74–4PY, Scotland.

A copy of the SB is contained in Rules Docket Number 83–ANE–5, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT:

Marc J. Bouthillier, Engine Certification Branch, ANE–142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7085.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 83–ANE–5". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to supersede Amendment 39–4639 (48 FR 19161), AD 77–20–04 R1, which requires a one time inspection and overhaul of propeller low torque switches. After issuing Amendment 39–4639, the FAA has determined that the one time inspection and overhaul is inadequate in identifying cracked switch diaphragms, and inadequate in preventing future diaphragm cracks. Therefore, the FAA proposes to supersede Amendment 39–4639 by imposing a life limit on propeller low torque switches.

A number of cracked propeller low torque switch diaphragms have been found. One was sufficiently cracked as to have an affect on the torque pressure at which the switch operated. The presence of such cracking, which cannot be identified by current field maintenance or preflight check activity, can delay the accomplishment of auto-feathering. A delay in auto-feathering could affect aircraft controllability. Since this condition is likely to exist or develop on other engines of the same type design, the proposed amendment would impose a life limit on certain propeller low torque switches.

Conclusion

The FAA has determined that the proposed regulation involves 784 engines, and the approximate cost would be $190 per engine. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13, the following new airworthiness directive (AD) which supersedes AD 77–20–04 R1, Amendment 39–4639 (48 FR 19161) as follows:

Rolls-Royce plc: Applies to Rolls-Royce plc (R–R) (Formerly Rolls-Royce Limited) Dart Mks. 506, 510, 511, 514, 515, 520, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 542, 543, and 550 series turboprop engines and all variants.

Compliance is required as indicated, unless already accomplished.

To prevent a delay in auto-feathering, remove from service low torque switch Part Numbers (P/N) 3700892, 3700895, 3701232, 3500355–356, 3500410–412, L944707–709, L944738–740, L944742–744 and L944769, in accordance with R–R Dart Service Bulletin Da61–12, Revision 2, dated September 1978, per the following schedule:

(a) Remove from service, low torque switches that have accumulated 5 or more calendar years time in service on the effective date of this AD, within 12 months from the effective date of this AD.

(b) Remove from service, low torque switches that have accumulated less than 5 calendar years time in service on the effective date of this AD, within 5 calendar years time in service, or within 12 months from the effective date of this AD, whichever occurs later.

(c) Remove from service, low torque switches which cannot have their in-service calendar time established, within 12 months from the effective date of this AD.

(d) Thereafter, remove from service, low torque switches at or prior to accumulating 5 calendar years time since initial installation on an engine.

Note.—The calendar time commences with initial installation of a new switch, or an overhauled switch, on an engine. This limit includes storage or on-shelf time accumulated after initial installation on an engine. Overhaul of the low torque switch zero-times the part.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

This amendment supersedes Amendment 39–4639 (48 FR 19161), AD 77–20–04 R1.

Issued in Burlington, Massachusetts, on November 18, 1986.

William H. Williams, Jr.,

Acting Director, New England Region.

[FR Doc. 86–26584 Filed 11–25–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AGL–2]

Proposed Alteration of Federal Airways V–7 and V–510

AGENCY: Federal Aviation. Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the comment date for Federal Airway V–7 and V–510 as published in the **Federal Register** on November 4, 1986 (51 FR 40036). The date given for comments was "November 16, 1986." The correct date is "December 16, 1986."

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9249.

Issued in Washington, DC, on November 19, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86–26582 Filed 11–25–86; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–23817; File No. S7–737]

Designation of National Market System Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and solicitation of public comments.

SUMMARY: The Commission is proposing amendments to its rules governing (i) the designation of securities qualified for trading in a national market system and (ii) transaction reporting. These amendments would result in the designation as National Market System Securities of all securities for which transactions are reported pursuant to an effective transaction reporting plan. The Commission also is proposing conforming amendments to related rules. The Commission is taking this action after reviewing the comments received in response to two releases relating to the designation of National Market System Securities.

DATE: Comments to be received by December 31, 1986.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7–737, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272–2414, Room 5205, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") is proposing amendments to Rule 11Aa2–1 ("NMS Securities Rule")[1] under the Securities Exchange Act of 1934 ("Act"),[2] which establishes criteria and procedures for designating certain securities as qualified for trading in a national market system ("NMS Securities"). The Commission also is proposing amendments to Rule 11Aa3–1 ("transaction reporting rule") under the Act, which governs the collection and dissemination of transaction information for equity securities.[3]

The proposed amendments would replace the existing NMS designation criteria with a standard designating as NMS Securities all over-the-counter ("OTC") or listed securities for which transactions are reported pursuant to an effective transaction reporting plan approved by the Commission pursuant to Rule 11Aa3–1 under the Act ("reported securities").[4] The transaction reporting rule also would be amended to require the NASD to designate certain NASDAQ securities as subject to transaction reporting. In addition, the proposed amendments would conform related rules under the Act to the new definition of an NMS Security.

The Commission is proposing these amendments after soliciting comment on issues relating to the designation of NMS Securities[5] and on proposed amendments to the NMS Securities Rule that would have provided the NASD with the authority to adopt certain corporate governance standards in addition to the Commission's current NMS eligibility criteria.[6]

In conjunction with these proposed amendments to the Commission's rules, the NASD has filed with the Commission a proposed rule change and reporting plan amendment that would incorporate into the NASD's rules and reporting plan designation standards based on the Tier 2 NMS criteria currently contained in the Commission's NMS Securities Rule, and include certain corporate governance criteria previously proposed by the NASD.[7] Adoption of the NASD's proposal concurrently with the Commission's proposed rule amendments would ensure the continuance of OTC transaction reporting.

II. Background

In the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress directed the Commission "to facilitate

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[1] 17 CFR 240.11Aa2–1. *See* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("Rule 11Aa2–1) Adoption Release").

[2] 15 U.S.C. 78a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. No. 94–29 (June 4, 1979), 89 Stat. 97, [1979] U.S. Code Cong. & Adm. News 97.

[3] 17 CFR 240.11Aa3–1. *See* Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377.

[4] *See* 17 CFR 240.11Aa3–1. Reported securities include all securities listed on the New York Stock Exchange ("NYSE" and the American Stock Exchange ("Amex"), sole regional exchange listings that substantially meet the Amex or NYSE listing criteria, and OTC securities presently designated as NMS Securities. Transaction reports for listed securities from all markets are collected and disseminated pursuant to a transaction reporting plan administered by the Consolidated Tape Association ("CTA"). The CTA members are the New York, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, and the National Association of Securities Dealers, Inc. ("NASD"). Transaction reports for NMS Securities are collected and disseminated through the NASD's electronic interdealer quotation system ("NASDAQ") or by communicating with NASDAQ headquarters.

[5] *See* Securities Exchange Act Release No. 22127 (June 21, 1985) 50 FR 26584 ("NMS Securities Concept Release"). *See also infra* notes 24–25 and accompanying text.

[6] *See* Securities Exchange Act Release No. 22505 (October 4, 1985), 50 FR 41697 ("NMS Securities Corporate Governance Release"). *See also infra* notes 28–29 and accompanying text.

[7] *See* SR–NASD–86–27 and Securities Exchange Act Release Nos. 23818 and 23819 (November 17, 1986) ("Proposed Reporting Plan"). *See also id.*

the establishment of a national market system for securities." [8] In giving the Commission this broad mandate, Congress neither defined the term "national market system" nor specified the minimum components of such a system. Instead, Congress vested in the Commission "broad discretionary powers to oversee the development of a national market system" and "maximum flexibility" in working out its specific details in a manner consistent with the findings and goals of the 1975 Amendments.[9]

As part of the general mandate to facilitate the establishment of an NMS, Congress specifically directed the Commission, by rule, to "designate the securities or classes of securities qualified for trading in the national market system." [10] The 1975 Amendments, however, were silent as to the particular standards the Commission should employ in designating NMS Securities. Similarly, the legislative history did not mandate the use of any particular set of standards in the designation process. Instead, Congress provided the Commission with the flexibility and discretion to base NMS designation standards upon the Commission's experience in facilitating the development of a national market system.[11]

On February 17, 1981, the Commission adopted the NMS Securities Rule. The Rule provides criteria and procedures for designating certain securities, primarily securities traded solely OTC, as NMS Securities.[12] The primary effects of designating OTC stocks as NMS Securities at the present time are: (1) Transactions in such securities must be reported in a real-time system in accordance with the Commission's transaction reporting rule; [13] (2) quotations for such securities must be firm as to the quoted price and size in accordance with the Commission's firm quotation rule; [14] and (3) customer confirmations of principal trades in such securities must disclose mark-ups and mark-downs.[15] In adopting the Rule, the Commission determined, among other things, that real-time transaction reporting and firm quotations would increase market efficiency and enhance opportunities for public investors to obtain execution of their orders in the best possible markets.[16]

The rule employs a two-tiered approach for designation pursuant to procedures established by an NASD-administered Designated Plan.[17] Tier 1, which became effective April 1, 1982, requires that the most actively traded OTC securities be designated as NMS Securities.[18] Tier 2, which became effective on February 1, 1983, permits additional OTC securities to become NMS designated at the election of the issuer.[19]

Based on the early trading experience of NMS Securities, the Commission and most industry participants concluded that last sale reporting and firm quotations had improved the markets for NMS Securities and benefited investors without imposing undue burdens on market makers.[20] In February 1984, the NASD petitioned the Commission to expand the Tier 2 designation critieria to allow more issuers of OTC securities to elect NMS status. The NASD requested that the Tier 2 criteria incorporate the alternative standards that the NASD used to determine its National List (*i.e.*, the list of NASDAQ securities that the NASD supplies to the national news media), which focused primarily on issuer characteristics.[21] Using the flexibility provided it by Congress, the Commission, on December 18, 1984, adopted the revised Tier 2 criteria proposed by the NASD, thereby increasing the number of OTC securities eligible for designation from 1350 to approximately 2500.[22] The Commission

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[8] *See* section 11A(a)(2) of the Act.

[9] *See* Senate Comm. on Banking, Housing, and Urb. Affairs, *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 75, 94th Cong., 1st Sess. 7–9 [Comm. Print 1975], *reprinted in* [1975] U.S. Code Cong. & Ad. News 179, 185–87 ("Senate Report"). *See also* Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354; Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360. The 1975 Amendments establish that "[t]he securities markets are an important national asset which must be preserved and strengthened" through the application of "new data processing techniques." Section 11A(a)(1) of the Act. Congress found that these techniques should be used to foster intermarket linkages, enhance investor protection, and maintain fair and orderly markets. Congress stated as goals of an NMS the availability of quotation and transaction information, the efficient execution of transactions, fair competition between the markets, the execution of customer orders in the best possible market, and, where consistent with other goals, the execution of orders without the participation of a dealer. Section 11A(a)(2) of the Act.

[10] *See* section 11A(a)(2) of the Act.

[11] Congress, however, did expect that securities designated would have trading characteristics sufficient to ensure that they would benefit from NMS initiatives. *See* Senate Report, *supra* note 9, at 194.

[12] Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13992–94 Currently, most NMS Securities are not listed on a national securities exchange. Effective January 1, 1986, however, certain securities listed on regional stock exchanges as well as NASDAQ and not reported via the CTA are eligible for NMS designation. *See infra* note 27 and accompanying text. In adopting the NMS Securities Rule, the Commission concluded that establishing NMS qualification criteria for listed securities was unnecessary at that time because most listed securities already were included in NMS last sale and quotation disclosure facilities, and selection of less than all reported securities as NMS Securities could create unwarranted distinctions among these securities. Nonetheless, the Commission specifically left open whether exchange traded securities should be designated as NMS Securities in the future. *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13994–95, 14000–04.

[13] 17 CFR 240.11Aa3-1.

[14] 17 CFR 240.11Ac1-1.

[15] *See* Rule 10b-10 under the Act, 17 CFR 240.10b-10. *See also* Securities Exchange Act Release No. 22397 (September 11, 1985), 50 FR 37648. In addition, the Commission has issued a policy statement indicating its willingness, subject to certain conditions, to approve exchange applications for unlisted trading privileges in NMS Securities. *See infra* note 26 and accompanying text.

[16] *See* Rule 11Aa2-1 Adoption Release, *supra* note 1, at 13996.

[17] *See* 17 CFR 240. 11Aa2–1(b)(1). The NASD's "National Market System Securities Designation Plan with Respect to NASDAQ Securities" generally provided procedures for designating NMS Securities, determining substantial compliance with the designation criteria, and publishing lists of designated securities. The plan also establishes maintenance criteria for NMS Securities and criteria for terminating or suspending the designation of NMS Securities. *See* Securities Exchange Act Release No. 18399 (January 7, 1982), 47 FR 2226. *See also* Securities Exchange Act Release No. 22894, 50 FR 49642.

[18] *See* 17 CFR 240. 11Aa2–1(b)(4)(i) The Tier 1 criteria for mandatory NMS designation require that the issuer of the NASDAQ security must have net tangible assets of at least $2,000,000 and capital and surplus of at least $1,000,000. In addition, there must be at least 500,000 publicly owned shares of stock outstanding with a total market value of at least $5,00,000. Furthermore, the price per share must be at least $10 or more, the average trading volume per month must be at least 600,000 shares, and there must be at least four NASDAQ market makers in the security.

[19] *See* 17 CFR 240. 11Aa2–1(b)(ii), (iii). The Tier 2 designation criteria were amended in December 1984, and contain two alternative sets of criteria. The first alternative, applicable to newer companies with substantial net income but less extensive assets, requires that an issuer have net income in the previous fiscal year or in two of the last three fiscal years of at least $300,000, and at least 350,000 publicly held shares with a market value of $2,000,000. This alternative also requires a minimum bid price per share of three dollars and minimum of two NASDAQ market makers in the stock for five business days prior to the application date. *See* 17 CFR Part 240.11Aa2–1(b)(4)(ii). The second alternative, applicable to longer established companies with substantial assets, requires that the issuer have operated for four years, have capital and surplus of $8,000,000, and have at least 800,000 publicly held shares with a market value of $8,000,000. This second alternative also requires a minimum of two NASDAQ market makers for five business days before the application date, but imposes no minimum price per share requirements. *See* 17 CFR 240.11Aa2–1(b)(4)(iii).

[20] *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730, 735 ("Rule 11Aa2–1 Amendments Release").

[21] For a discussion of the NASD's petition, see Securities Exchange Act Release No. 20902 (April 30, 1984), 49 FR 19314.

[22] *See* Rule 11A2–1 Amendments Release, *supra* note 20, at 735–37. The Commission received 347 comments on the proposed amendments to the Rule. Most commentators focused on the broad issue of whether it was appropriate to expand the number of securities eligible for NMS designation to the level of the NASD's National List, and generally on the importance of retaining minimum bid price, trading

Continued

stated that the expansion was justified because it provided additional OTC securities with the benefits of last sale reporting and furthered the ongoing consideration of whether to include some or all NMS Securities in other NMS initiatives.[23]

Following the expansion of the Tier II NMS designation criteria, the Commission, on June 21, 1985, solicited comment on a broad range of issues concerning NMS designation.[24] Noting that last sale reporting had become an established part of the OTC market, the Commission asked commentators to address what direction NMS designation should take and how these securities should participate in the NMS. With respect to NMS designation, the Commission stated: "[T]o the extent the Rule is deemed either to be no longer necessary to encourage OTC reporting or to confer an unfair advantage on OTC stocks designated as NMS Securities, should the Rule be refocused to designate other types of securities as NMS Securities?" [25]

While the NMS Securities Concept Release comment solicitation was still outstanding, the Commission took a number of actions to reduce barriers to competition between exchange and OTC markets. On September 16, 1985, the Commission announced the terms and conditions for exchanges to commence trading NMS Securities on an unlisted trading privileges basis ("OTC/UTP").[26] At the same time, the Commission also amended the NMS Securities and transaction reporting rules to allow listed securities that are not reported in the consolidated transaction reporting system to be designated as NMS Securities.[27]

In addition, in response to a petition from the NASD, the Commission, on October 4, 1985, proposed amendments to the Rule to allow the NASD to adopt, as additional NMS eligibility criteria, certain corporation governance requirements.[28] The Commission proposed the enabling amendments for public comment and requested commentators to address the costs and benefits of granting the NASD explicit authority under the Rule to establish corporate governance eligibility criteria for NMS Securities, and alternative approaches to the proposed amendment which could be taken to attain the same end.[29]

III. Comments

Both the NMS Securities Concept and Corporate Governance Releases raised significant market structure issues, and elicited comments specifically addressing the question of what should be an NMS Security. The views of commentators are summarized below.[30]

A. NMS Concept Release

The Commission received 220 comments in response to the NMS Securities Concept Release. Commentators consisted of 109 issuers, 89 broker-dealers, five securities markets, five trade associations, one law firm, two investment advisers, and nine individuals. While a limited number of commentators addressed the panoply of issues raised by the NMS Securities Concept Release, most discussed only the question whether the rule should be redirected to encompass other securities.

The NASD[31] and the vast majority of OTC market participants [32] asserted that the Rule should be maintained in its present form. These commentators argued that revisions to the Rule are unnecessary because designation does not create a danger of public misperception of the investment quality of NMS Securities, and claimed that allegations to that effect come only from the NASD's exchange market competitors. They contend that suggested revisions to the Rule that would restrict designation to only a few securities and exclude securities currently covered would deprive investors, the securities markets, and issuers of the benefits of last sale reporting, and, coming so soon after the expansion of the Tier 2 eligibility criteria, would create confusion.[33]

Four stock exchanges and several other commentators favored refocusing the Rule.[34] The New York Stock

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volume, and market maker requirements. The NASD and the vast majority of OTC market participants fully supported the proposed Tier 2 expansion. Other commenters, including five stock exchanges, opposed the NASD's proposal, although they generally indicated support for the NASD's extending last sale reporting requirements to OTC stocks on its own. *See id.* at 732–735.

Among other things, opponents of the NASD's petition argued that the NASD was using the fact of NMS designation as a marketing device in competing with the exchanges for "listings." In approving the expansion of the Tier 2 NMS designation criteria, the Commission stated, however, that it "has never suggested that NMS designation warrants the quality of these securities," and that "there was no intent on the Commission's part to use this initiative as a vehicle to contrast the relative merits of OTC and listed securities." *See* Rule 11Aa2–1 Amendments Release, *supra* note 20, at 737 n.89.

[23] *See id.* at 735.

[24] *See* NMS Securities Concept Release, *supra* note 5. *See also* Securities Exchange Act Release No. 22505 (October 4, 1985), 50 FR 41697.

[25] *See* NMS Securities Concept Release, *supra* note 5, at 26587–88. With respect to integrating NMS Securities into other NMS facilities and initiatives, the Commission solicited comment on the extent to which NMS Securities should be included in intermarket linkages or made subject to trade-through or short sale rules. *See id.* at 26685–87.

[26] *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 (OTC/UTP Release"). The start of OTC/UTP trading is conditioned on, among other things, the Commission approving a plan submitted by the applicant exchanges and the NASD to consolidate exchange and OTC quotations and transaction reports in the NMS Securities for which UTP is granted. *See id.* at 38648–49. The Commission urges the NASD and interested exchanges to complete their negotiations regarding this plan by the end of the calendar year.

[27] *See* Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38515 ("OTC/Listed NMS Securities Release").

[28] *See* NMS Securities Corporate Governance Release, *supra* note 6. The term "corporate Governance" refers to SRO rules or listing standards that define shareholder rights and corporate management's responsibilities. The NYSE and, to a lesser extent, the Amex and the regional exchanges have corporate governance requirements for initial and continued listing. *Id.* at 41697. The NASD's corporate governance proposal specifies, among other things, that every NMS company be required to have a minimum of two independent directors on its board of directors and an audit committee composed of a majority of independent directors. In addition, the standards would establish requirements concerning shareholder meetings, quorums, proxies, and conflicts of interest. *See* Securities Exchange Act Release No. 22506 (October 4, 1985), 50 FR 41769.

[29] *See* NMS Securities Corporate Governance Release, *supra* note 6, at 41698.

[30] In additional to considering these comments in formulating the instant proposed amendments to the Rule, the Commission is separately examining the views of those commentators on other matters raised by the NMS Securities Concept Release, such as the appropriateness of short sale regulation, trade-through protection, and intermarket linkages for the OTC market, as part of its ongoing effort to facilitate the establishment of an NMS.

[31] *See* Letter from Gordon F. Macklin, President, NASD, to John Wheeler, Secretary, SEC (December 31, 1985) ("NASD Comment").

[32] OTC market participants include issuers, broker-dealers, and their respective organizations. Two of the three organizations of issuers and broker-dealers that commented asserted that the Rule should be maintained in its present form. *See* Letter from J. Patrick Campbell and Edward M. Posner, Chairman, OTC Trading Committee, Securities Industry Association, to John P. Wheeler, Secretary, SEC (December 24, 1985); Letter from Alan T. Rains, Jr., President, National Association of OTC Companies, to John Wheeler, Secretary, SEC (December 16, 1985). The National Security Traders Association ("NSTA"), however, asserted that listed securities also should be designated NMS Securities because, like those OTC securities currently designated NMS Securities, they are subject to last-sale reporting. *See* Letter from John N. Tognino, Chairman, and John L. Watson III, President, NSTA, to John Wheeler, Secretary, SEC (December 19, 1985).

[33] *See, e.g.*, NSAD Comment, *supra* note 31, at 1–3.

[34] In addition to the stock exchanges, the commentators who favored refocusing the Rule included the NSTA. *See* NSTA Comment, *supra* note 32, at 1–2.

Exchange, Inc. ("NYSE") and the Boston Stock Exchange, Inc. ("BSE") argued that the Rule was not necessary to maintain last sale reporting in the OTC market, and that the NASD both could and should propose its own reporting rules. Therefore, they concluded that the Commission should rescind the Rule.[35] The Amex suggested that all listed and OTC securities that are subject to real-time transaction and quotation reporting be designated as NMS Securities, and that the Rule be amended to delete the present Tier 1 and Tier 2 designation criteria and make all securities for which trades are reported pursuant to the Commission's transaction reporting rule eligible for designation.[36] The Midwest Stock Exchange, Inc. ("MSE") asserted that the Commission should adopt a new rule under section 11A(c)(1) of the ACt[37] requiring last sale and quotation reporting for exchange listed or NASDAQ traded securities and refocus the Rule to require mandatory NMS designation of those securities with trading characteristics suitable for auction-type trading.[38]

B. NMS Corporate Governance Release

The Commission received six comments in response to the NMS Corporate Governance Release. Commentators consisted of three securities markets, the North American Securities Administrators Association, Inc. ("NASAA"), a state corporation department, and a bar association. The commentators endorsed in principle establishing corporate governance standards for NASDAQ securities.[39] Four commentators, however, contended that the proposed amendments would delegate to the NASD the authority under the Rule to adopt criteria for NMS designation, and opposed the amendments on that ground.[40] The NYSE and the Amex asserted that the NASD should promulgate its own listing standards that would incorporate both corporate governance standards and transaction reporting requirements, but differed on how the Commission should facilitate that process, with the NYSE advocating rescinding the Rule and the Amex supporting making all reported securities eligible for NMS designation.[41] The BSE also argued that the NASD should adopt corporate governance standards for NASDAQ securities independently of the NMS designation process, but suggested that the Commission require, by rule, transaction reporting for all NASDAQ securities.[42] NASAA stated that granting a self-regulatory organization ("SRO") authority to establish NMS designation criteria potentially could undermine the integrity of the securities markets, and that some state oversight of SROs should be permitted if SROs were granted this authority.[43]

[35] *See* Letter from James E. Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC (January 20, 1986), at 7 ("NYSE Comment"); Letter from Brian Riddell, Executive Vice President, BSE, to John Wheeler, Secretary, SEC (February 4, 1986), at 2. The NYSE added that, if the Commission chose not to rescind the Rule, listed stocks included in NMS transaction reporting facilities should continue to be distinguished from OTC stocks designated as NMS Securities. *See* NYSE Comment, *supra*, at 7.

[36] *See* Letter from Kenneth R. Leibler, President and Chief Operating Officer, Amex, to John Wheeler, Secretary, SEC (June 11, 1986) ("Amex Comment"), at 13–17. The Amex stated that the NASD then could adopt its own eligibility standards for OTC trade reporting. *Id* at 14–16. The Amex also suggested that all NMS Securities, whether listed or OTC, should be subject to identical regulatory requirements, *e.g.*, trade-through and short sale rules. *Id.* at 5–10. As indicated above, the Commission will consider these comments in the course of its review of the comments on the NMS Securities Concept Release.

[37] Section 11A(c)(1) of the Act gives the Commission broad authority to adopt transaction and quotation reporting rules for the protection and benefit of investors.

[38] *See* Letter from John G. Weithers, Chairman, MSE, to John Wheeler, Secretary, SEC (May 7, 1986), at 5–8. The MSE stated that, in this way, last sale reporting would be maintained in the OTC market, and the Commission no longer would have to promulgate and adopt NASDAQ listing standards. In addition, issuer choice, corporate governance standards, and other issuer characteristics no longer would be elements in the NMS designation process. *Id.* at 8.

[39] Two commentators endorsed the specific criteria proposed by the NASD for NMS issuers. *See* Letter from Franklin Tom, Commissioner of Corporations, State of California, to John Wheeler, Secretary, SEC (November 8, 1986) ("Cal. Corp. Dep't Comment"), at 1–2; Letter from Arnold L. Jacobs, Chairman, Committee on Securities Regulation of the Association of the Bar of the City of New York, to John Wheeler, Secretary, SEC (November 19, 1985) ("N.Y.C. Bar Ass'n Comment"), at 1. One commentator, however, opposed the NASD's proposed corporate governance standards because the standards did not embody the one share-one vote principle. *See* Letter from Royce O. Griffin, President, NASAA, to John Wheeler, Secretary, SEC (December 13, 1985) ("NASAA Comment"), at 1–2.

[40] *See infra* text accompanying notes 41–43. One commentator expressed no opinion on the structural consequences of an explicit grant of authority to the NASD under the Rule to adopt corporate governance standards for NMS Securities. *See* N.Y.C. Bar Ass'n Comment, *supra* note 39, at 1–2. Another commentator, however, endorsed the proposed enabling amendments. *See* Cal. Corp. Dep't Comment, *supra* note 39, at 1.

[41] *See* Letter from James E. Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC (January 21, 1986), at 7–10; Amex Comment, *supra* note 36, at 17–22.

[42] *See* Letter from Brian Riddell, Executive Vice President, BSE, to John Wheeler, Secretary, SEC (December 19, 1985), at 3.

[43] NASAA Comment, *supra* note 39, at 4.

IV. Discussion

The Commission adopted the NMS Securities Rule in 1981 in order, among other things, to bring transaction reporting to the OTC market. Since the designation of the first NMS Securities in 1982, however, last sale reporting has become an established part of the OTC market, and is a benefit that OTC issuers have sought through the designation process.[44] Under the current structure of the Rule, Commission rulemaking is necessary in order to take any action that affects which NASDAQ securities are designated as NMS Securities. As the NMS Securities Tier 2 expansion rulemaking that concluded in December 1984 and the ongoing NMS Securities Corporate Governance rulemaking illustrate, this can be a lengthy and somewhat cumbersome process.[45]

The comments received in response to the NMS Securities Concept and Corporate Governance Releases have highlighted the need (1) to ensure the continued viability of real-time reporting in the OTC market and (2) to streamline NMS designation in general and provide the NASD with flexibility in establishing additional standards for those OTC securities designated as NMS Securities. After considering the comments regarding how best to accomplish these objectives in a manner consistent with the Act, the Commission, using the flexibility provided it by Congress, now proposes to amend the Rule to delete the current NMS Tier 1 and Tier 2 criteria and to define as NMS Securities all securities for which transactions reported are pursuant to an effective transaction reporting plan.

In addition, the Commission is proposing to amend its transaction reporting rule to require the NASD to establish criteria for determining which NASDAQ securities are subject to transaction reporting. Only those NASDAQ securities covered by the NASD rules and reporting plan would be considered "reported".

In order to provide an orderly transition to NASD designation of OTC reported securities, the NASD has filed with the Commission pursuant to section 19(b)(1) of the Act a proposed rule change to amend Schedule D of the NASD By-Laws and the NASD reporting plan.[46] Under the NASD's proposal, NASDAQ securities that satisfy standards equal to the current Tier 2 NMS eligibility criteria and the proposed

[44] *See* Rule 11Aa2–1 Amendments Release, *supra* note 20, at 735–36.

[45] *See supra* notes 21–29 and accompanying text.

[46] *See* Proposed Reporting Plan, *supra* note 7.

corporate governance standards would be eligible for transaction reporting pursuant to issuer election. All current OTC issuers whose securities have been designated as NMS Securities under the Tier 1 or Tier 2 criteria automatically could continue to be OTC reported securities.[47]

The Commission believes that the proposed amendments are consistent with the intent of Congress in adopting the 1975 Amendments. Although Congress anticipated that NMS designation criteria would relate to the trading characteristics of securities, Congress provided the Commission with maximum flexibility in developing a national market system. The Commission has participated actively in the development of a national market system for eleven years. During that period, it has become clear that the fundamental components of a national market system—market information systems, trading linkages, and market competition—clearly benefit the trading markets of securities with widely varying trading characteristics. For this reason, all Amex and NYSE securities have been included in the consolidated transaction reporting and quotation systems. In addition, essentially all listed reported securities which are multiple traded have been included in the Intermarket Trading System. Similarly, the vast majority of NASDAQ securities qualifying under present Tier 2 standards have been designated as NMS Securities and are included in the NASDAQ/NMS reporting system. For these reasons, securities included in NMS quotation and transaction reporting systems, the fundamental building blocks of an NMS, should be designated as qualified for participation in any NMS facility.[48]

The proposed amendments also would accord OTC securities currently designated as NMS Securities and listed securities reported to the consolidated tape equal treatment under the NMS Securities Rule and the transaction reporting rule, and thereby address the concern expressed by some [49] that the NMS Securities Rule favors NASDAQ stocks over listed stocks. NMS eligibility for both OTC and listed securities would be tied to the transaction reporting rule. The requirements for an effective transaction reporting plan for NASDAQ securities would parallel those for listed securities. The CTA has determined based on a reporting plan filed with and approved by the Commission which listed securities are eligible to be reported to the consolidated tape,[50] and the NASD would do the same through its proposed amendments to its reporting plan that subject certain NASDAQ securities to the reporting requirements of the plan.

The proposed amendments to the Rule and the transaction reporting rule furthermore would streamline NMS designation. The Commission would continue to have an NMS Securities Rule as contemplated by the Act,[51] and would be able to exercise oversight over which securities are designated by reviewing the eligibility standards established in the reporting plans filed by the self-regulatory organizations, either individually or jointly. Because the NMS designation criteria would be established by reference to a reporting plan, however, the Commission would not have to amend the Rule each time changes in the designation criteria were suggested. Consequently, the NASD could expand the universe of NASDAQ securities reported on a real-time basis for filing with the Commission an amendment to the NASDAQ reporting plan. At the same time, the Commission would retain authority to disapprove any proposal that would impose criteria that either inappropriately restrict or expand those securities eligible for last sale reporting and, consquently, NMS designation.[52]

By removing from the Commission's rules the current NMS designation criteria, the proposed amendments provide the NASD with flexibility to initiate proposed standards for and encourage the development of OTC trade reporting with the Commission retaining ultimate control over the standards through its approval and amending authority with respect to self-regulatory organizations' rules and transaction reporting plans. The proposed amendments also allow the NASD to propose last sale reporting eligibility standards that do not incorporate the current Tier 1 NMS mandatory designation criteria. Indeed, the NASD proposes to do just that. If approved, this would mean that, for the first time, issuers whose securities had been mandatorily designated under Tier 1 would be able to elect to opt out of transaction reporting.

The Commission preliminarily believes that granting Tier 1 issuers that option would not be inappropriate. Mandatory designation of the most actively traded OTC securities was necessary when the NMS Securities Rule was first adopted in order to ensure that the most actively traded NASDAQ securities would be included in a transaction reporting system. The Commission determined that this was appropriate because of the clear benefits to public investors and market efficiency resulting from each reporting. The Commission also recognized the potential that issuers of Tier 1 securities might not voluntarily request designation, because of concerns raised at that time by some market participants that last sale reporting would adversely affect market liquidity in those securities.[53]

In the four years since the first OTC securities were designated as NMS Securities, however, it has become generally accepted that OTC trade reporting provides investors with improved information on executions, enhances market efficiency and liquidity, and increases the public exposure of market information concerning NMS issuers.[54] Because

[47] These NMS issuers would have a grace period with which to comply with the NASD's proposed corporate governance criteria. Those criteria would not become effective until 18 months after their adoption. *See* Proposed Reporting Plan, *supra* note 7.

[48] The Commission recognizes that securities which are traded in only one market cannot benefit from market linkage facilities. In light of the Commission's decision regarding UTP for OTC securities, however, any reported security may be traded by multiple markets in the future. Given that fluid situation and the Commission's belief that such securities would benefit from inclusion in a market linkage system, we see no reason to determine that those securities are not qualified to trade in an NMS.

[49] Exchange commentators raised this competitive question in the NMS Securities Tier 2 expansion rulemaking, see *supra* note 22, and the Commission solicited comment on this issue in the NMS Securities Concept Relase. *See supra* notes 24–25 and accompanying text. The Commission has considered rescinding the Rule in its entirety. The Commission believes, however, that totally rescinding the Rule would be inappropriate because the term NMS Securities has become identified with those OTC securities that are reported on a real-time basis, and a change in that term could prove unnecessarily confusing to investors. The Commission also believes that this would be inappropriate in view of Section 11A(a)(2) of the Act, which requires the Commission, by rule to "designate the securities or classes of securities qualified for trading in the national market system." *See supra* text accompanying note 10 and Rule 11A2–1 Amendments Release, *supra* note 20, at 736.

[50] The Commission approved the CTA Plan in Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799. While currently the transaction reporting rule requires that exchanges file a transaction reporting plan for all listed securities, the Commission has approved exceptions for securities that do not meet certain criteria. *See* Securities Exchange Act Release No. 10851 (June 13, 1974), 39 CFR 22194. Thus, the transaction reporting plan for listed securities does not require transaction reports for securities that are listed solely on regional stock exchanges and do not meet Amex listing standards.

[51] *See Supra* note 10 and accompanying text. *See also supra* note 49.

[52] *See* sections 19(b)(2) and 19(c) of the Act, and Rules 19b–4, and 11A3–2(b)(2) under the Act.

[53] *See* Rule 11Aa2–1 Adoption Release *supra* note 1, at 13995–98.

[54] *See supra* note 44 and accompaying text.

trade reporting has been both widely accepted by and proven beneficial to investors and the OTC market, the Commission believes that, even without specific designation criteria in the Rule, transaction reporting will continue to spread in the OTC market. The Commission believes, therefore, that there is no longer any need to mandate trade reporting for Tier 1 OTC securities.[55]

For the foregoing reasons, the Commission preliminarily believes that the proposed amendments to the Rule and the transaction reporting rule would continue OTC transaction reporting, and make NMS designation more flexible. Nonetheless, the Commission solicits comments on whether the proposed amendments fulfill these objectives, and whether there would be a better method by which to do the same in a manner consistent with the Act.[56] In addition, the Commission solicits comment on the possible costs and benefits of the proposed amendments, and of any suggested alternatives. The Commission preliminarily believes that the costs entailed by the Commission's proposal are nominal because last sale reporting requirements would not be increased or extended to a greater number of securities, while the benefits include significant reductions in legal and regulatory burdens to SROs and the Commission.

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") pursuant to the Regulatory Flexibility Act ("RFA")[57] regarding the proposed amendments to the Rule and the transaction reporting rule. The IRFA states that the proposed amendments would designate all reported securities as NMS securities. The IRFA also notes that the NASD concurrently has proposed to incorporate into the NASD's rules and reporting plan the existing NMS designation criteria as well as certain corporate governance requirements. The IRFA states that the proposed amendments should ensure the continued viability of real/time reporting in the OTC market and streamline the NMS designation process. The IRFA also notes that, at the same time, the proposed amendments would not make any additional securities subject to transaction reporting. The IRFA notes, however, that the proposed amendments indirectly could impose certain costs on small issuers and broker-dealers, but that these costs would be minimized. Nonetheless, the IRFA solicits comments on any possible costs the proposed amendments might have on small entities, and on possible alternatives to the proposed amendments.

A copy of the IRFA may be obtained by contracting Andrew E. Feldman, (202) 272-2414, Division of Market Regulations, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 11A(a), 11A(c), 10(a), 31 and 23(a) thereof, 15 U.S.C. 78k-1(a), 78k-3(a), 78j, 78ee, and 78w(a), the Commission proposes to amend §§ 240.11Aa2-1, 240.11Aa3-1, 240.11Ac1-1, 240.10a-1, and 240.31-1 in Chapter II of Title 17 of the Code of Federal Regulations.

Text of Proposed Amendments to Rules 11Aa2-1, 11Aa3-1, 11Ac1-1, 10a-1, and 31-1

Note.—Arrows indicate text proposed to be added. Brackets indicate text proposed to be deleted.

Chapter II, Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w).

* * * * *

Sections 240.11Aa2-1 and 240.11Aa3-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat 127 (15 U.S.C. 78o-3); sec. 11A, as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

* * * * *

Section 240.11Aa1-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); as amended by Pub. L. 94-29 June 4, 1975; Sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94-29, 89 Stat 127-131 (15 U.S.C. 78o-3, as amended by Pub. L. No. 94-29 (June 4, 1975); sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

* * * * *

Section 240.10a-1 also issued under Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94-29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. No. 94-29, 89 Stat 127, 15 U.S.C. 78o-3); sec. 11A, as added by sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1).

* * * * *

Section 240.31-1 also issued under Secs. 2, 3, 23, and 31, Pub., L. 78-291, 48 Stat. 881, 882, 901, and 904, as amended by secs. 2, 3, 18, and 22, 89 Stat. 97, 155, and 162 (15 U.S.C. 78b, 78c, 78w, and 78ee.

2. Section 240.11Aa2-1 is revised as follows:

§ 240.11Aa2-1 Designation of national market system securities.

◆The term "national market system security" shall mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan approved by the Commission pursuant to § 240.11Aa3-1 (Rule 11Aa3-1 under the Act).◆

3. Section 240.11Aa3-1 is amended by revising paragraphs (a)(4), (a)(5), (a)(6), and (b)(1), redesignating (b)(2) (i) through (vii) as (b)(2) (ii) through (viii), adding a new (b)(2)(i), and revising newly redesignated (b)(2)(ii) as follows:

§ 240.11Aa3-1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) * * *

* * * * *

(4) The term "reported security" shall mean any listed equity security or ◆NASDAQ◆ [national market system] security for which [a] transaction◆ reports are required to be reported on a real-time basis pursuant to a

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[55] Although the NASD's proposal, if approved, would allow issuers to opt out of last sale reporting, it also would, at least initially, ensure that all those OTC securities that currently are designated as NMS Securities, including current Tier 1 securities, could continue to be reported on a real-time basis. By considering the NASD's proposed reporting plan at the same time as the proposed amendments to the Rule and the transaction reporting rule, the Commission is ensuring that OTC transaction reporting would not be interrupted if the proposed amendments changing the NMS designation structure were adopted.

[56] Because all reported securities, and not just OTC securities, would be designated as NMS Securities pursuant to these proposals, the Commission also is proposing amendments to exemptions contained in Rules 11Ac1-1, 10a-1, and 31-1 under the Act where the term "National Market System Security" is used to specify an OTC reported security.

[57] 5 U.S.C. 604.

transaction◆ reporting plan [with respect to transactions in such security is required

(5) The term "listed equity security" shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange ("exchange")◆, except for a NASDAQ Security◆[that is not a national market system security].

◆(6) The term "NASDAQ security" shall mean any registered equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation system ("NASDAQ")

(i) Which is not listed or admitted to unlisted trading privileges on an exchange; or

(ii) Which is listed or admitted to unlisted trading privileges on an exchange provided that:

(A) No rule, stated policy or practice of such exchange shall prohibit, condition, or otherwise limit, directly or indirectly, the ability of any member to effect any transaction in such security otherwise than on such exchange, and

(B) Such exchange shall permit NASDAQ market makers telephone access to exchange trade facilities with respect to transactions in NMS Securities to the same extent that exchange market makers are permitted access to NASDAQ market makers, and

(C) Transaction reports in such security are not collected, processed, and made available pursuant to the plan submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Securities Exchange Act of 1934, as amended ("the CTA Plan"), which plan was declared effective as of May 17, 1974.◆

* * * * *

(b)(1) ◆Every exchange shall, with respect to transactions in listed equity and NASDAQ securities executed through its facilities, and every association shall, with respect to transactions in listed equity and NASDAQ securities executed by its members otherwise than on an exchange, file a transaction reporting plan.◆

(2) * * *

(i) The listed equity and NASDAQ securities or classes of such securities for which transaction reports shall be required by the plan;◆ [i] ◆(ii)◆ Reporting requirements with respect to transactions in listed equity securities or ◆ NASDAQ◆ [national market system] securities, for any borker or dealer subject to the plan;

* * * * *

4. § 240.11Ac1–1 is amended by revising paragraphs (a)(16) and (a)(18), removing paragraph (a)(19), and redesignating paragraphs (a)(20) and (a)(21) as paragraphs (a)(19) and (a)(20) as follows:

§ 240.11Ac1–1 Dissemination of quotations for reported securities.

(a) * * *

(16) The term "consolidated system "shall mean the consolidated transaction reporting system submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Securities Exchange Act of 1934, as amended, which plan was declared effective as of May 17, 1974◆ [contemplated by § 240.11Aa3–1 (Rule 11Aa3–1 under the Act)].

* * * * *

(18) The term "Rule 19c–3 security" shall mean any [exchange-traded] security◆listed on at least one exchange◆which is not a "covered security" as that term is defined in § 240.19–c–3 (Rule 19c–3 under the Act).

* * * * *

5. Section 240.10a–1 is amended by revising paragraph (a)(1)(ii) as follows:

§ 240.10a–1 Short sales.

(a)(1)(i) * * *

(ii) The provisions of paragraph (a)(1)(i) of this section shall not appy to transactions by any person in◆NASDAQ◆[National Market System] securities as defined in◆§ 240.11Aa3–1 (Rule 11Aa3–1◆ [§ 240.11Aa2–1 (Rule 11A2–1 under the Act).

* * * * *

6. Section 240.31–1 is amended by revising paragraph (f) as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

* * * * *

(f) Transactions in◆NASDAQ◆[National Market System] securities as defined in◆§ 240.11Aa3–1 (Rule 11Aa3–1◆ [§ 240.11A2–1 (Rule 11Aa2–1] under the Act). The terms and provisions of this paragraph shall remain effective until May 6, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

November 17, 1986.

[FR Doc. 86–26672 Filed 11–25–86; 8:45 am]

BILLING CODE 8010–01–M

Notices

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 21, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Foreign Agricultural Service
  Licenses for Importation/Transfer of Sugar to be Re-Exported in Sugar-Containing Products
  Recordkeeping: On occasion
  Businesses or other for-profit; Small businesses or organizations; 345 responses; 575 hours; not applicable under 3504(h)
  Carol Brick-Turin (202) 447–2916
- Food and Nutrition Service
  Shelters for Battered Women and Children—Part 273
  Recordkeeping; On occasion
  Individuals or households, State or local governments; Federal agencies or employees; 137 responses; 106 hours; not applicable under 3504(h)
  Mildred Kriegel (703) 756–3429
- Rural Electrification Administration
  Certification of Authority
  REA–675
  On occasion
  Small businesses or organizations; 450 responses; 45 hours; not applicable under 3504(h)
  Bert Huntington (202) 382–1966

Reinstatement

- Economic Research Service
  Cotton Distribution Survey
  Once in 5 to 6 years
  Businessess or other for-profit; 387 responses; 194 hours; not applicable under 3504(h)
  Edward H. Glade, Jr. (202) 786–1840
- Food and Nutrition Service
  Federal-State Special Supplemental Food Program Agreement
  FNS–339
  Annually
  State or local governments; 87 responses; 44 hours; not applicable under 3504(h)
  Laurie Hickerson (703) 756–3710

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 86–26671 Filed 11–25–86; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

National Park Service

Interagency Grizzly Bear Committee; Interagency Guidelines on Management of Grizzly Bear

AGENCIES: Forest Service, USDA; Bureau of Land Management, Fish and Wildlife Service, National Park Service, USDI.

ACTION: Notice of the Interagency Grizzly Bear Guidelines as approved by the Interagency Grizzly Bear Committee.

SUMMARY: Based on comments received in response to the May 28, 1985 (50 FR 21696) request for public comments, the above-named Federal agencies, as members of, and representing the Interagency Grizzly Bear Committee (IGBC), announce the adoption of the final Interagency Guidelines on Management of Grizzly Bear. The Guidelines, which affect the management of grizzly bears in Idaho, Montana, Washington, and Wyoming, will be integrated into each agency's directive system and implemented through each agency's land and resource management activities.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT:

Lorraine Mintzmyer, Regional Director, National Park Service, USDI, P.O. Box 25287, Denver, Colorado 80225, (303) 234–2500

Galen Buterbaugh, Regional Director, Fish and Wildlife Service, USDI, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, (303) 234–2209

James C. Overbay, Regional Forester, Forest Service, USDA, P.O. Box 7669, Missoula, Montana 59807, (406) 329–3316

Dean Stepanek, State Director, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107

SUPPLEMENTARY INFORMATION:

History of the Guidelines

In 1983, the Secretaries of Agriculture and the Interior established an

Interagency Grizzly Bear Committee to provide a consistent and coordinated approach toward achieving grizzly bear recovery, as mandated by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1536, 1538–1540). Committee members include representatives from the Forest Service, National Park Service, Bureau of Land Management, Fish and Wildlife Service, and the Fish and Wildlife agencies of the States of Idaho, Montana, Wyoming, and Washington.

In 1979, several of the agencies participated in developing Guidelines for Management Involving Grizzly Bears in the Greater Yellowstone Area ("Guidelines"). Since then, the Guidelines have undergone several revisions as agencies developed first-hand experience in implementing them. They were submitted to the Fish and Wildlife Service in May 1979, for formal consultation, in accordance with the Endangered Species Act. The biological opinion of the Fish and Wildlife Service concluded that implementation of the Guidelines will promote the conservation of the grizzly bear.

Overview of Guidelines

The Guidelines identify and describe five Grizzly Bear Management Situations and contain specific guidelines for managing grizzly bears and other resources in these areas. Each Management Situation has a description of the grizzly bear population and habitat conditions, followed by general management direction applicable to lands containing those conditions. Appendix A to this notice provides the text of each of the Grizzly Bear Management Situations contained in the Guidelines.

The full text of the Guidelines also includes resource management guidelines for coordinating management of wildlife, timber, fire, range, recreation, mineral, watershed, and special uses in relation to grizzly bears. The resource guidelines differ somewhat for each Management Situation, according to the bear population, habitat conditions, and associated management direction emphasis. Guidance consists of ways to maintain and improve habitat, ways to minimize the potential for grizzly-human conflict, and recommendations to resolve grizzly-human conflicts.

The document also contains several appendices useful to resource managers. The appendices deal with interagency responsibilities, methods for dealing with nuisance grizzly bears, methods of evaluating grizzly bear habitat quality and of estimating consequences of proposed management activities, the Biological Opinion rendered by the Fish and Wildlife Service on use of the Guidelines, and the agreement establishing the Interagency Grizzly Bear Committee.

Summary of the Review, Proposals, Comments, and Responses

The Interagency Grizzly Bear Committee (IGBC) published the text of the Management Situations and proposed changes, and issued a request for public comments on May 28, 1985 (50 FR 21696) and then held 19 public meetings on the Guidelines in Idaho, Montana, Washington, Wyoming.

In addition to the public comments received at the meetings, the IGBC received one hundred twenty-five (125) written comments. An interagency team reviewed a content analysis of the comments and modified the proposed changes. The team also added an item on preventive control of known nuisance grizzly bears. These proposals were then circulated to all line officers who held the public meetings. Based on comments, one further change was made in definition and direction for Management Situation 2.

Proposal: Broaden the Scope and Application of Guidelines. The Guidelines originally were developed for application in the Greater Yellowstone Area. The Committee proposed changing the name from "Guidelines for Management Involving Grizzly Bears in the Greater Yellowstone Area" to "Interagency Grizzly Bear Guidelines". Further, the Committee proposed formal application of the Guidelines on National Forest System, National Park System, and Bureau of Land Management lands throughout occupied grizzly bear ecosystems in the States of Idaho, Montana, Washington, and Wyoming per the Grizzly Bear Recovery Plan.

Comments: Several respondents supported this proposal; others commented that the different grizzly bear ecosystems need guidelines tailored to the specific region.

Committee Response: The IGBC believes the Guidelines provide sound principles and general practices that are suitable for the various grizzly bear ecosystems and allow for appropriate consistency across those ecosystems. The IGBC adopted the proposal, with one change in the recreation management guidelines under Management Situation 1.

This change provides the flexibility to tailor the strictness of sanitation standards to local conditions. Thus, mandatory standards can be applied in areas where conflicts with people have been documented, or where grizzly bear populations are relatively small and survivorship of individual bears is considered crucial for recovery of the species. Mandatory sanitation standards may not be needed in areas with a low likelihood of conflicts, or where grizzly populations are larger and individual survival is less crucial for recovery.

Proposal: Create a Sixth Management Situation Designation. The Committee proposed to add a new section, Management Situation 2A, to provide guidance for interim management of lands where additional biological data is needed to classify an area as Management Situation 1 (necessary for recovery) or Management Situation 2 (unnecessary for recovery). The proposed section was designed to deal with the fact that none of the five Management Situations in the original guidance provided guidelines for areas where additional information is needed to fully determine whether habitat resources are necessary for recovery. In cases of such uncertainty, there is a risk that certain land uses could impinge on recovery.

Comments: The proposal to add Management Situation 2A received considerable comment. Reasons for support centered on the need for interim guidance for lands where biological information is insufficient. Reasons for opposition included mistrust of such stratifications and concern about continued ambiguity and management uncertainty. Also, some respondents expressed a preference for a conservative management approach, whereby habitat of uncertain value for grizzly bear recovery would be protected until such time that it could be classified as either Management Situation 1 or Management Situation 2.

Committee Response: The IGBC believes the Guidelines and the attendant Management Situations represent a comprehensive and integrated approach to the goal of grizzly bear conservation.

Although the context and direction for management varies legitimately across Management Situations, it is the overall integration of management actions and human activities in Management Situations 1, 2, 3, and 4 that has direct or indirect relationships to the conservation and recovery of the grizzly. Based on the comments received, the Committee believes that a revision in Management Situation 2, rather than a separate description, is the best way to reflect this variable but integrated management approach to species recovery and to reduce the risks involved in cases of uncertainty.

The Committee made three substantive changes in Management Situation 2. Initially, Management Situation 2 described areas where

grizzlies occur but which lack distinct population centers, and are considered unnecessary for survival and recovery of the species. As revised, Management Situation 2 now also includes areas where the necessity of the habitat resources for recovery has not yet been determined.

Another change in Management Situation 2 concerns the effect of major Federal actions or programs. The original description of Management Situation 2 indicated major Federal activities or programs might affect the conservation of the grizzly bear by contributing to human-caused bear mortalities. The revision adds a statement recognizing that major Federal activities or programs also might affect bear conservation by long-term displacement where the zone of influence could affect habitat use in areas classified as Management Situation 1.

The third change in Management Situation 2 addresses management direction for areas where there is uncertainty about importance of the habitat resource for recovery. In such cases, when grizzly population and/or habitat use and other land uses are mutually exclusive, other land uses may prevail provided they do not cause irretrievable or irreversible resource commitments which preclude the possibility of future classification to Management Situation 1 (necessary for recovery). This change reduces the level of risk to recovery that exists when there is uncertainty about the importance of an area to meeting recovery goals.

Proposal: Allow Modification of Guidelines on Administrative Units. The original guidelines were written to address occupied grizzly bear habitat throughout the Greater Yellowstone Area. The proposal was to allow modification of the resource management guidelines on a given administrative unit of the Forest Service, National Park Service, or Bureau of Land Management to address more specifically the resource situation on a given unit.

Comments: Nearly all respondents on this subject supported the need for flexibility but differed regarding the appropriate management level. Most respondents indicated that: (a) Modification of the resource management guidelines should be an interagency decision at an ecosystem level (i.e., Ecosystem Management Subcommittee), and (b) refinement of vegetation prescriptions would best be handled by a local administrative unit (i.e., National Forest).

Committee Response: The IGBC concurs with the sentiment expressed in the public comments and modifed the proposal to provide appropriate flexibility. An Interagency Ecosystem Management Subcommittee may recommend changes (as necessary) in the resource management guidelines for approval by the Interagency Grizzly Bear Committee. Administrative units within the National Forest, Park Service, or Bureau of Land Management may modify the Guidelines only to develop more precise vegetation prescriptions which support the direction and objectives for a Management Situation.

Response to Other Concerns of Respondents

Other Concerns: Several respondents expressed concern that the Guidelines lacked an administrative mechanism for preventing problem grizzly-human conflicts, particularly where public land classified as Management Situation 1 adjoins private lands. Suggestions for proactive management ranged from a "buffer zone" concept to guidelines for intercepting a specific bear(s).

Committee Response: The IGBC believes that responsiveness to this valid concern is vital to successful conservation of the species. First, it should be noted that the present Guidelines state that grizzly habitat enhancement will not be done in close proximity to private property or other areas which could bring grizzlies in contact with humans. Nevertheless, the lands of concern may be important seasonal range for grizzlies, and bears may be there using existing habitat components without causing trouble. Hence, creation of a "buffer zone" does not appropriately address the concern of adjacent private landowners.

The IGBC recognizes that certain grizzlies have known behavior patterns, which, when combined with location, time, and other factors, indicate that an incident is highly probable. To provide guidance for these situations which require the safe removal of target bears, the Committee has added a section entitled Preventive Action (included as Appendix B in this notice) to the Guidelines. This guidance provides the involved agencies with an appropriate mechanism for proactive management of probable conflict situations. Such action could be implemented regardless of the Management Situation involved. Human activities must be in compliance with applicable guidelines to minimize potential for grizzly-human conflicts for that Management Situation.

For copies of the full text of the Interagency Grizzly Bear Guidelines, contact James C. Overbay, Regional Forester, USDA Forest Service, P.O. Box 7669, Missoula, Montana 59807 (406–329–3316).

For the Forest Service:

Dated: November 5, 1986.

R. Max Peterson,

Chief.

For the Bureau of Land Management:

Dated: November 19, 1986.

Robert F. Burford,

Director.

For the Fish and Wildlife Service:

Dated: November 17, 1986.

Frank Dunkle,

Director.

For the National Park Service:

Dated: November 18, 1986.

William Penn Mott, Jr.,

Director.

Appendix A—Text of Management Situations

The five Management Situations and related management direction which the specific guidelines address are as follows:

Management Situation 1

Population and habitat conditions. The area contains grizzly population centers (areas key to the survival of grizzlies where seasonal or year-long grizzly activity, under natural, free-ranging conditions is common) and habitat components needed for the survival and recovery of the species or a segment of its population. The probability is very great that major Federal activities or programs may affect the grizzly (that is, will have direct or indirect relationships to the conservation and recovery of the grizzly).

Management direction. Grizzly habitat maintenance and improvement and grizzly-human conflict minimization will receive the highest management priority. Management decisions will favor the needs of the grizzly bear when grizzly habitat and other land use values compete. Land uses which can affect grizzlies and/or their habitat will be made compatible with grizzly needs or such uses will be disallowed or eliminated. Grizzly-human conflicts will be resolved in favor of grizzlies unless the bear involved is determined to be a nuisance. Nuisance bears may be controlled through either relocation or removal but only if such control would result in a more natural free-ranging grizzly population and all reasonable measures have been taken to protect the bear and/or its habitat (including area closures and/or activity curtailments).

Management Situation 2

Population and habitat conditions. Current information indicates that the area lacks distinct population centers; highly suitable habitat does not generally occur, although some grizzly habitat components exist and grizzlies may be present occasionally. Habitat resources in Management Situation 2 either are unnecessary for survival and recovery of the species, or the need has not yet been determined but habitat resources may be necessary. Certain management

actions are necessary. The status of such areas is subject to review and change according to demonstrated grizzly population and habitat needs. Major Federal activities may affect the conservation of the grizzly bear primarily in that they may contribute toward (a) human-caused bear mortalities or (b) long-term displacement where the zone of influence could affect habitat use in Management Situation 1.

Management direction. The grizzly bear is an important, but not the primary, use of the area. In some cases, habitat maintenance and improvement may be important management considerations. Minimization of grizzly-human conflict potential that could lead to human=caused mortalities is a high management priority. In this management situation, managers would accommodate demonstrated grizzly populations and/or grizzly habitat use in other land use activities if feasible, but not to the extent of exclusion of other uses. A feasible accommodation is one which is compatible with (does not make unobtainable) the major goals and/or objectives of other uses. Management will at least maintain those habitat conditions which resulted in the area being stratified Management Situation 2. When grizzly population and/or grizzly habitat use and other land use needs are mutually exclusive, the other land use needs may prevail in management consideration. In cases where the need of the habitat resources for recovery has not yet been determined, other land uses may prevail to the extent that they do not result in irretrievable/irreversible resource commitments which would preclude the possibility of eventual restratification to Management Situation 1. If grizzly population and/or habitat use represents demonstrated needs that are so great (necessary to the normal needs or survival of the species or a segment of its population) that they should prevail in management considerations, then the area should be reclassified under Management Situation 1. Managers would control nuisance grizzlies.

Management Situation 3

Population and habitat conditions. Grizzly presence is possible but infrequent. Developments, such as campgrounds, resorts or other high human use associated facilities, and human presence result in conditions which make grizzly presence untenable for humans and/or grizzlies. There is a high probability that major Federal activities or programs may affect the species' conservation and recovery.

Management direction. Grizzly habitat maintenance and improvement are not management considerations. Grizzly-human conflict minimization is a high priority management consideration. Grizzly bear presence and factors contributing to their presence will be actively discouraged. Any grizzly involved in a grizzly-human conflict will be controlled. Any grizzly frequenting an area will be controlled.

Management Situation 4

Population and habitat conditions. Grizzlies do not occur in the area but habitat and human conditions make the area potentially suitable for grizzly occupancy, and the area is needed for the survival and recovery of the species. The probability is very great that major Federal activities and programs may affect the species' conservation and recovery.

Management direction. The grizzly bear is an important potential use on the area. Grizzly habitat maintenance and improvement are important management considerations. Grizzly-human conflict minimization is not a management consideration. Habitat and human conditions making the area suitable for grizzly occupancy will not be degraded pending decisions regarding reestablishment of grizzlies.

Management Situation 5

Population and habitat conditions. Grizzlies do not occur, or occur only rarely in the area. Habitat may be unsuitable, unavailable, or suitable and available but unoccupied. The area lacks survival and recovery values for the species or said values are unknown. Major Federal activities and programs probably will not affect species conservation and recovery.

Management direction. Consideration for grizzly bears and their habitat in other resource related decisions is not directed. Maintenance of grizzly habitat is an option. Any grizzly involved in a grizzly-human conflict will be controlled.

Appendix B—Guidelines for Preventive Action

Under the Appendix, "Plan for Determining Grizzly Bear Nuisance Status and for Controlling Nuisance Grizzly Bears", add:

IV. Preventive Action

Certain specific grizzlies have known behavioral patterns, which, when combined with location, time and other factors, indicate that an incident is highly probable. In such situations, direct preventive action designed to safely remove the bear(s) from the situation (prior to an occurrence which would result in nuisance status and possible loss of the bear(s) to the ecosystem) can be implemented regardless of the Management Situation involved. Human activities must be in compliance with applicable guidelines to minimize potential for grizzly-human conflicts for that Management Situation. Control actions should be designed to capture and remove the specific target bear(s).

[FR Doc. 86-26619 Filed 11-25-86; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Fishermen's Contingency Fund
Form Number: Agency—NOAA 88-164, 88-166; OMB-0648-0082
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,365 respondents; 13,650 reporting hours
Needs and Uses: The purpose of the Fishermen's Contingency Fund is to compensate commerical fishermen for losses or of damages to fishing gear or vessels attributable to oil and gas activities on the Outer Continental Shelf. The application form and 15-day report are required in order to file claims against the fund.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations; individuals
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Fishing Vessel and Gear Damage Compensation Fund
Form Number: Agency—NOAA 88-178; OMB—0648-0094
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 400 respondents; 8,000 reporting hours
Needs and Uses: The application form is required of commerical fishermen who file claims against the Fishing Vessel and Gear Damage Compensation Fund in accordance with Section 10 of the Fishermen's Protective Act of 1967. The purpose of the Fund is to compensate fisherman for vessel casualties caused by foreign vessels and for gear casualties caused by any other vessel, whether foreign or domestic.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations; individuals
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395-3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 19, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division.

[FR Doc. 86-26657 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[C-580-602]

Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cooking Ware From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in the Republic of Korea (Korea) of certain stainless steel cooking ware as described in the "Scope of Investigation" section of this notice. We are not including Woo Sung Company, Ltd. (Woo Sung) or Dae Sung Industrial Company, Ltd. (Dae Sung) in this determination because benefits received by those companies are *de minimis*. Where a company receives *de minimis* benefits, we consider that to be a "significant differential" warranting company-specific treatment under section 706 of the Tariff Act of 1930 as amended by section 607 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). The estimated net subsidy for all other manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware is 0.78 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel cooking ware from Korea, except that produced and exported by Woo Sung or Dae Sung, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0187 or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of stainless steel cooking ware. For puposes of this investigation, the following programs are found to confer subsidies:

- Short-Term Export Financing under the Export Financing Regulations and Foreign Trade Financing Regulations;
- Export Tax Reserve under Articles of the Act Concerning the Regulation of Tax Reduction and Exemption;
- Unlimited Deduction of Overseas Entertainment Expenses under Article 18-2 of the Corporation Tax Law;
- Loans to Promising Small and Medium Enterprises;
- Exemption from the Acquisition Tax under the Law for the Promotion of Income Sources in Rural Areas; and
- Duty Drawback on Non-physically Incorporated Items and Excessive Loss Rates under the Duty Drawback System.

We determine the estimated net subsidy for certain stainless steel cooking ware to be 0.78 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except for Woo Sung and Dae Sung which have not been included in this determination.

Case History

On January 21, 1986, we received a petition filed in proper form by the Fair Trade Committee of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures certain stainless steel cooking ware. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on February 10, 1986, we initiated an investigation (51 FR 6019, February 19, 1986). We stated that we expected to issue a preliminary determination by April 16, 1986.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On March 4, 1986, the ITC determined that there is a reasonable indication that imports of certain stainless steel cooking ware from Korea materially injury, or threaten material injury to, a U.S. industry (51 FR 9541, March 19, 1986).

We presented questionnaires concerning the petitioner's allegations to the Government of Korea at its embassy in Washington, DC on February 20, 1986. We received the responses to our questionnaires on March 26, 1986.

There are seven Korean producers of the subject merchandise accounting for over 75 percent of the exports to the United States during the period of review. They are Kyung Dong Industrial Company, Ltd. (Kyung Dong), Namil Metal Company, Ltd. (Namil), Il Shin Company, Ltd. (Il Shin), Hai Dong Stainless Industries Co. (Hai Dong), Woo Sung, Dae Sung, and Bum Koo Industrial Co., Ltd. (Bum Koo). For the producers identified above, the following trading companies accounted for substantially all of their trading company sales of the subject merchandise to the United States during the review period: Sammi Corporation, Daewoo Corporation, Korea Trading International Company, Samsung Company, Haitai International, Sunkyong Company, Daewonsa Corporation, Hyundai Corporation, G.I. Corporation, Ssangyong Corporation, and Dong Chang Company.

On the basis of information contained in the responses, we made a preliminary negative countervailing duty determination on April 16, 1986 (51 FR 15520, April 24, 1986). On April 30, 1986, we extended the deadline for the final determination in this investigation to September 15, 1986, to correspond to the dates of the final determinations in the antidumping duty investigations of the same products from Korea and Taiwan (51 FR 16882, May 7, 1986). This was done at the request of petitioner pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). From April 28 through May 12, 1986, we verified the responses of the Government of Korea and the following companies: Bum Koo, Hai Dong, Kyung Dong, Namil, Il Shin, Woo Sung, Sammi, Hyundai, Daewonsa, Daewoo, and Samsung.

On August 1, 1986, the deadlines for the final determinations in the antidumping duty investigations of certain stainless steel cooking ware from Korea and Taiwan were postponed to no later than November 19, 1986.

Accordingly, the final determination for the countervailing duty investigation of certain stainless steel cooking ware from Korea was also postponed to coincide with the antidumping duty determinations of the same products from Korea and Taiwan (51 FR 28610, August 8, 1986).

On August 12, 1986, we presented a supplemental questionnaire to the Government of Korea requesting information on additional programs which came to our attention during the course of the verification of the sales responses in the concurrent antidumping duty investigation. We received the response to that questionnaire on August 26, 1986. The verification of the response to the supplemental questionnaire was conducted between August 27 and August 29, 1986.

Petitioner submitted a request for a hearing, which was subsequently withdrawn with the consent of respondents. Both petitioner and respondents filed briefs discussing the issues arising in this investigation which have been taken into consideration in this determination.

Scope of Investigation

The products covered by this investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper, or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, frying pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 *TSUS* classification.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments filed by petitioner and respondents, we determine the following.

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware under the following programs:

A. Short-Term Export Financing

Petitioner alleges that producers and exporters in Korea of certian stainless steel cooking ware receive preferential short-term export financing under the Export Financing Regulations.

The Export Financing Regulations were promulgated on February 25, 1982. On October 17, 1985, these regulations were terminated with the creation of the Foreign Trade Financing Regulations. These latter regulations provide the guidelines for short-term export financing. Export financing takes the form of loans on bills related to export sales transactions. Eligibility is based upon presentation of export documents or upon past export performance. Export loans based on past preformance cannot exceed 90 days, while loans based on specific export documents cannot exceed 180 days and are limited to the terms of the applicable letter of credit. During our review period, the rate of interest charged on short-term export financing remained constant at ten percent, which was the ceiling established by the governor of the Bank of Korea.

During verification, we found that the Bank of Korea continues to set different rediscount ratios for export and domestic short-term loans. We first learned of this preference in the administration of short-term loans in our investigation of *Oil Country Tubular Goods* in 1984.

The rediscount ratio for export loans is 70 percent of the face value of the loan. The rediscount ratio on domestic commercal bills is 30 percent of the face value of the loan for large firms. The rediscount ratio for small- and medium-sized firms is 70 percent. Small- and medium-sized firms are defined as companies with fewer than 300 employees.

Of the seven producers, Kyung Dong and Namil are classified as large firms, as are all the trading companies, except G.I. Corporation.

Because only exporters are eligible to use the short-term export financing, we find these loans to be countervailable to the extent that they are provided on preferential terms. Moreover, we determine that the different rediscount ratios applied to financing for the large firms (70 percent for export transactions, 30 percent for domestic transactions) results in the provision of export financing on preferential terms for large firms. This is because in lending to large firms, commercial banks have an incentive to channel more funds to finance those firms' export transactions and fewer funds to finance their domestic transactions.

To measure the benefit bestowed on large firms, we computed a weighted-average interest rate to represent what large firms pay to finance domestic transactions. Because commercial banks have an incentive to direct their loans for large firms to financing export transactions, large firms are likely to receive relatively less commercial bank financing for their domestic transactions. As a result, large firms must seek alternative sources for financing domestic sales.

The weighted-average interest rate we have computed is a best estimate measure of the preference created by the different rediscount ratios. It includes the interest rates on commercial bank loans for domestic transactions, financing from investment and finance companies, the curb market, and the issuance of commercial paper.

The weights assigned to each of these sources of short-term domestic credit were based on the *Monthly Statistical Bulletin* of the Bank of Korea and on the annual survey on curb market financing published by the Korean Chamber of Commerce. The *Monthly Statistical Bulletin* provided the size of, and interest rates charged on, short-term financing from each of the sources except the curb market. We are using the information from the Korean Chamber of Commerce as the most appropriate measure of the average curb market size and rate in 1985, because it is the only independently-conducted survey of the curb market we were able to obtain during this investigation.

Using the data from these sources we calculated a weighted-average interest rate of 13.02 percent. We compared that rate to the 10 percent interest rate on export loans received by the companies classified as large companies.

For small- and medium-sized firms, no preference is created by the rediscount ratios because the ratios for export loans and domestic loans to small- and medium-sized businesses are identical. Instead, export financing for small- and medium-sized firms is countervailable to the extent that the interest rate on export loans is less than the benchmark interest rate. We have chosen as our benchmark the interest rate on

commercial bank loans for domestic transactions.

During 1985, the interest rate on domestic short-term bank loans was allowed to vary from 10 to 11.5 percent. During our verification of *Offshore Platform Jackets and Piles from Korea* in September and October 1985, we were told by the Bank of Korea, the Korea Development Bank, and two commercial banks that, although the interest rate is allowed to vary from 10 to 11.5 percent, commercial banks will usually charge the ceiling rate of 11.5 percent on all their lending. The respondents in their briefs in this current investigation concede the fact that most lending by commercial banks is done at 11.5 percent. Therefore, to measure the benefits from those companies classified as small- and medium-sized firms, we compared the 10 percent interest rate for their export loans to the benchmark interest rate of 11.5 percent charged by commercial banks on domestic short-term lending.

In determining the benefit provided under this program, we based our calculations on total export loans because the companies were unable to tie specific loans to the products under investigation. For the export loans to the trading companies, we factored the benefit back to the producers based on the ratio of exports to the United States of cooking ware made through the trading company for each respective producer over total exports of the trading company. We calculated the interest savings to the companies and divided the interest savings by total exports of the producers. Using this methodology, we calculated an estimated net subsidy of 0.38 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. for Dae Sung, we calculated an estimated net subsidy of 0.18 percent *ad valorem*, and for Woo Sung, we calculated an estimated net subsidy of 0.16 percent *ad valorem*.

Since Dae Sung and Woo Sung have been excluded from this determination, we have deducted both the benefits received under this program and their sales from our denominator when calculating the estimated net subsidy for all other manufacturers, producers, or exporters. The same procedure was followed in the calculation of the estimated net subsidy for each of the other programs determined to confer subsidies.

B. Export Tax Reserves

Petitioner alleges that manufacturers, producers, and exporters of the subject merchandise receive tax benefits under Articles 22, 23, and 24 of the Act Concerning the Regulation of Tax Reduction and Exemption. These articles provide for deductions from taxable income for a number of different reserves covering export losses, overseas, market development, and price fluctuation losses.

Under Article 22, a corporation may establish a reserve amounting to one percent of foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

Under Article 23, governing overseas market development, a corporation may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in developing overseas markets are offset from the reserve fund. Like the export loss reserve fund, if there are no offsets for expenses, the reserve is returned to the income account and taxed, after a one-year grade period, over a three-year period.

A price fluctuation reserve fund may be established under Article 24. A corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses resulting from the fluctuation of prices for export goods by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve fund are eventually reported as income and subject to corporate tax either when they offset export losses or when the one-year grace period expires.

We determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferral, contingent upon exports, of direct taxes.

To measure the benefit conferred by the deferral, we treated the tax savings on these funds as short-term interest-free loans. Accordingly, the amount of tax savings was multiplied by the rate of interest the firm would have had to pay for a short-term commercial bank loan (11.5 percent). On this basis, we calculated an estimated net subsidy of 0.01 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. For Dae Sung, we calculated an estimated net subsidy of 0.02 percent *ad valorem*, and for Woo Sung, we calculated an estimated net subsidy of less than 0.01 percent *ad valorem*.

C. Unlimited Deduction of Overseas Entertainment Expenses

Petitioner alleges that producers and exporters of the subject merchandise receive tax benefits in the form of entertainment expense deductions.

Under Article 18–2 of the Corporation Tax Act and supporting legislation, entertainment expenses for domestic clients and foreign clients ("overseas entertainment expenses") are eligible to be deducted from taxable income. The amount which can be deducted for domestic entertainment expenses is subject to a ceiling according to an established formula and depending on the amount of any overseas entertainment expenses claimed. There is no cap on overseas entertainment expenses. Because entertainment expense deductions are unlimited only for export business activities, we determine that this program confers benefits which constitute export subsidies, to the extent that the overseas expenses claimed are greater than those which would have been allowed using the domestic cap formula.

To calculate the benefit from this program for the review period, we added the amounts of overseas entertainment expenses claimed in the companies' tax returns filed in 1985 exceeding their domestic caps. We then divided this amount by the value of exports in 1985, and calculated an estimated net subsidy of 0.01 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. For Dae Sung, we calculated an estimated net subsidy of less than 0.01 percent *ad valorem*. Woo Sung did not receive any benefits under this program.

D. Exception from the Acquisition Tax

Under the Law for the Promotion of Income Sources in Rural Areas, companies which establish factories in rural areas may be exempted from paying the acquisition tax on purchases of land, buildings, and capital equipment. The rate of the acquisition tax is two percent. Since the tax exemption is limited to companies located in certain regions of the country, we determine the program to be countervailable.

During the review period, Bum Koo was the only producer to receive this tax exemption. To calculate a benefit under this program, we took the total amount

of tax exemption received and divided by the total sales value of all the producers. Using this methodology, we calculated an estimated net subsidy of 0.07 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. Dae Sung and Woo Sung did not receive any benefits under this program.

E. Loans to Promising Small and Medium Enterprises

Under this program, the Bank of Korea directs banks to provide loans to select "promising" small- and medium-sized companies. The Ministry of Trade and Industry provides the guidelines to be used by the banks in designating promising companies. According to these guidelines, promising small and medium companies are to be designated among:

- companies producing basic raw materials and components for manufacturing industries;
- companies possessing advanced technology;
- exporting companies;
- import-substituting companies;
- companies producing folk artifacts and souvenirs;
- companies manufacturing high-quality sporting goods;
- companies manufacturing Olympic-related merchandise; and
- rural companies producing local specialties with local resources.

Bum Koo and Il Shin have been designated as promising companies and both had loans outstanding under this program during the period of review.

During verification we were not provided with documentation on the specific criterion Bum Koo and Il Shin, or any other company, met to be selected as a promising company under this program. From the selection criteria of the program, it appears that the only criterion either company could meet is that it is an exporting company. Therefore, we determine that the loans received by Bum Koo and Il Shin under this program are countervailable to the extent that they were provided at preferential interest rates.

For Bum Koo, the information provided in the supplemental response on the outstanding loans under this program did not correspond to the loan information contained in the company's interest-expense ledger. Therefore, we used the interest-expense ledger to determine the amount of loans outstanding under this program for Bum Koo. For Il shim, we used the information contained in the supplemental response.

To determine whether loans received under this program provided a countervailable benefit, we compared their interest rate to the interest rate on other long-term loans received by the two companies. For Il Shin, the interest rates of previously outstanding loans were reduced when the company was designated as "promising" under this program. Therefore, we compared the interest rate on the loans prior to the designation to the interest rate on the loans after the designation of Il Shin.

For Bum Koo, it appears from the information that we verified that the company has only received loans from under this program or under the Export Loan program. Therefore, as a benchmark for Bum Koo, we used the interest rate on the long-term loans of Il Shin prior to its designation, as best information available on the national average interest rate on long-term variable rate loans, and compared that to the interest rate of the loans Bum Koo received under this program. Using that benchmark, we determine that the loans received by Il Shin and Bum Koo under this program are countervailable.

Since these are variable-rate loans, we used our short-term methodology to calculate the benefit conferred by this loan program. To calculate a benefit, we took the amount of the interest savings of the loans and divided by the total export value of all producers. Using this methodology, we calculated an estimated net subsidy of 0.11 percent *ad valorem* for all manufacturers, producers or exporters in Korea except Dae Sung and Woo Sung. Dae Sung and Woo Sung did not receive any benefits under this program.

F. Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates

Under the Korean duty drawback system, cooking ware manufacturers are allowed to claim duty drawback on emery powder and chromic oxide. Emery powder and chromic oxide are used in the washing and polishing of cooking ware, and are not physically incorporated in the exported item. We determine the amount of duty drawback received on emery powder and chromic oxide to be countervailable because they are not physically incorporated into the exported item.

The Korean government also establishes an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the loss or wastage for the raw material. For stainless steel sheet or coil used in the production of cooking ware, two standard usage rates (input ratios) based on the loss rates are established by the Government of Korea. For pots, kettles, creamers and colanders (category 1) the rate is 1.5530. For pans, dishes, bowls and kitchen tools (category 2), the rate is 1.4465. For example, to claim duty drawback on 1.5530 kilograms of stainless steel, only 1 kilogram need be physically-incorporated in an exported pot. These input ratios include material which may later be sold as scrap.

The Government of Korea reduces the amount of duty drawback received on the exported product to account for the sale of by-products produced from the excess raw materials used in the production of the exported goods. For stainless steel cooking ware, a deduction for stainless steel scrap is made. This deduction is based on the grade of the steel. For AISI–430, a deduction of 2.13 percent is made to reflect the sale of scrap which is created in the production process of cooking ware. For AISI–304, the deduction rate is 2.46 percent.

During the government verification on the calculation of these rates, we reviewed summarized calculations of input ratios. However, when we asked to see the backup documentation, including the files and the responses from cooking ware companies used to determine these rates, we were told by government officials that these records were not available. Because we were unable to check back to source documents, we must consider the government calculation of the input ratios as unverified.

We have determined that a duty drawback program which includes some amount for loss or wastage in determining the amount of custom duties remitted on raw materials used in the manufacture of exported goods is not necessarily countervailable. Duty drawback for loss or wastage a only becomes countervailable when the allowance for this loss or wastage is unreasonable or excessive. We consider duty drawback received on recoverable scrap to constitute an unreasonable or excessive remission of customs duties. Therefore, when loss or wastage rates include recoverable scrap, we would find that the rates are excessive, and, thus, countervailable.

In this case, we compared, as best information available, the government's value-based duty drawback reduction rate (which theoretically accounts for the sale of scrap), to the average ratio of the value of the companies' actual scrap sales to total input purchased. Information on company-specific scrap sales was contained in the cost verification reports for the concurrent antidumping duty investigation, which

have been formally submitted on the record of the countervailing duty investigation by respondents' counsel. Making this comparison, we find that the government's reduction rate does not adequately compensate for scrap sales. As such, we find that the duty drawback in this case is excessive, and hence, countervailable. To calculate the benefit from the excessive drawback, we multiplied the percentage of the excessive duty drawback by the total amount of duty drawback (less the amount of drawback received on emery powder and chromic oxide since that entire amount is countervailable).

Adding the benefits from the drawback of emery powder and chromic oxide and the excessive drawback from recoverable scrap, and dividing by total exports of the producers, we calculated an estimated net subsidy of 0.20 percent *ad valorem* for all manufacturers, producers, or exporters in Korea except Dae Sung and Woo Sung. For Dae Sung, we calculated an estimated net subsidy of 0.15 percent *ad valorem*, and for Woo Sung, we calculated an estimated net subsidy of 0.18 percent *ad valorem*.

II. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware did not use the the following programs:

A. Tariff Reductions on Plant and Equipment

Petitioner alleged that certain Korean manufacturers receive special tariff reductions on imported plant and equipment. Article 28 of the Customs Law allows for reductions of import duties for certain industries on particular items designated by the Ministry of Finance. According to the responses of the Government of Korea and Korean companies, and based upon our findings at verification, producers of the subject merchandise are not eligible for tariff reductions because Article 28 specifies that only machinery used in the production of machine parts, and machinery used in the manufacture of electronic goods are eligible for this program.

B. Free Export Zone Program

Petitioner alleged that firms located in free export zones received certain tax incentives such as exemptions on corporate, residence, defense, and property taxes. According to the responses of the Government of Korea and Korean companies, and based upon findings at verification, no stainless steel cooking ware producers or trading companies selling cooking ware are located in free export zones.

C. Export Credit Financing from the Export-Import Bank of Korea

Petitioner alleges that producers and exporters of certain stainless steel cooking ware may receive below market financing for pre-export projects and export transactions. Petitioner further alleges that the National Investment fund (NIF) finances exports on a deferred payment basis. According to the response of the Government of Korea, and based upon our findings at verification, financing from the Export-Import Bank of Korea (KXMB) is only provided for large capital goods, and no such financing is provided for exports of consumer goods like cooking ware. The only source of NIF deferred payment export loans is through export credit financing programs of the KXMB, and cooking ware exports are not eligible for such financing.

D. Export Guarantees from the KXMB

Petitioner alleged that producers of the subject merchandise receive advance payment export guarantees and performance quarantees from the KXMB. According to the response of the Government of Korea, and based upon verification findings, the KXMB only provides such guarantees for exports of large capital goods and projects, and no guarantees are offered for sales of consumer goods such as stainless steel cooking ware.

E. Accelerated Depreciation

Petitioner alleged that producers of the subject merchandise receive accelerated depreciation benefits. Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption" permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation, determined by a formula based on the firm's foreign exchange earnings and total business earnings. We found at verification that none of firms investigated used accelerated depreciation under this program during the review period.

Respondents' Comments

Comment 1: Respondents contend that the commercial bank rate for domestic commercial loans and bill discounting is the correct rate to use as the benchmark for short-term export financing.

DOC Position: We agree that it is the appropriate benchmark for small-and medium-sized firms. For large firms, however, the different rediscount ratios mean that banks prefer to finance these firms' exports, as opposed to domestic transactions. We measure this preference by computing a weighted-average interest rate comprising the alternative sources of financing used by large firms to finance their domestic transactions. This treatment of short-term financing is consistent with our *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Korea* (49 FR 46776, November 28, 1984).

Comment 2: Respondents argue that the Korean "curb market" cannot be the benchmark to measure the preference created by export loans, nor should it be included in any weighted-average benchmark.

DOC Position: The curb market rate, alone, does not accurately reflect the overall non-export financing interest rate. However, it is a source of domestic financing in Korea, and, thus, was included in the calculation of the weighted-average interest rate used to measure the preference arising from the different rediscount ratios for large firms.

Comment 3: Respondents argue that the average rate of all non-government regulated sources of financing is not an appropriate benchmark.

DOC Position: We agree. As stated above, we used the commercial bank rate for domestic loans as the benchmark. Non-government regulated financing was only included when measuring the benefit conferred by different rediscount ratios for large firms.

Comment 4: Respondents argue that Sammi Corporation's tax credit relating to the sale of its shipping vessels is not a subsidy for its cookware exports.

DOC Position: We agree. However, the credit is one not generally available in Korea and it reduced Sammi's effective corporate tax rate. Thus, we calculated the benefit to Sammi under the export tax reserve programs using the corporate tax rate that would have applied absent the reduction due to the specified tax credit.

Comment 5: Respondents argue that there are no counteravailable benefits as a result of the rediscount ratios.

DOC Position: Because of the difference in the rediscount ratios for export loans and for domestic bills of large companies, we determine that a preference is provided in the administration of the export loan program. To measure that preference,

we used a weighted-average interest rate as the best estimate of the benefit conferred on large firms by this preference.

Comment 6: Respondents contend that benefits occurring from export tax reserves tied directly to products other than stainless steel cooking are not countervailable.

DOC Position: We agree. Where we have verified that benefits pertain to some product other than the subject merchandise, we have followed our standard practice of not including such benefits in the calculation of the estimated net subsidy.

Petitioner's Comments

Comment 1: Petitioner contents that the benchmark rate should be the Korean "curb market" rate. Petitioner further claims that even if the curb market is not used as the benchmark, the benchmark should be the average of all non-government controlled financing rates.

DOC Position: As explained in the section of the notice "Analysis of Programs," we have used the weighted-average interest rate on short-term debt instruments to measure the preference conferred on large firms by the different rediscount ratio applied to their loans. This weighted-average interest rate is not a benchmark, as we typically use that term. It measures the preference created by the different rediscount ratios, not the preference created by low-interest export loans absent the different rediscount ratios. The benchmark, which measures the preference absent the different rediscount ratios, is the interest rate on commercial bank loans for domestic transactions.

We have rejected the curb market rate as a benchmark because it is not representative of what firms in Korea would pay to finance domestic transactions. Instead, to finance domestic transactions, they rely primarily on commercial bank loans. As a result, commercial bank loans are the appropriate benchmark for small- and medium-sized firms. The *Subsidies Appendix* states that we will use the most appropriate national average commercial method of short-term financing. Because commercial banks are the predominant source, they represent the source of financing most used.

While we occasionally use more than one instrument in computing a benchmark, it is the exception rather than the rule. We only use more than one instrument when no single instrument represents the average borrowing experience of firms in that country, as reflected by the overall amount of borrowing which occurs from that source.

Comment 2: Petitioner argues that the tax credit Sammi Corporation received under Article 46 of the Corporate Tax Law on its income from the sale of shipping vessels is countervailing as a domestic subsidy.

DOC Position: We disagree. Where respondents have shown that benefits pertain to merchandise other than the subject merchandise, we have followed our standard policy of not including such benefits in our calculation of the estimated net subsidy. However, we note that in calculating the corporate tax rate for Sammi, we did not allow these credits to reduce Sammi's effective rate, because the credits are provided to a specific enterprise or industry, or a group of enterprises or industries.

Comment 3: Petitioner contends that the rediscounting preference granted to large firms confers a countervailable subsidy.

DOC Position: See our position to Respondents' Comment 5.

Comment 4: Petitioner argues that all benefits received as a result of tax reserves, whether pertaining to the products subject to this investigation or not, are countervailable subsidies.

DOC Position: We disagree. Where respondents have shown that benefits pertain to merchandise other than the subject merchandise, we have followed our standard policy of not including such benefits in our calculation of the estimated net subsidy.

Comment 5: Petitioner argues that the Korean system of duty drawback remits duties and taxes on items not physically-incorporated in exported cooking ware.

DOC Position: We have determined that duty drawback received from emery powder and chromic oxide is countervailable because these chemicals are not physically-incorporated.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed normal verification procedures, including meeting with government officials, as well as on-site inspection of the companies, inspection of documents and ledgers, and tracing information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Korea, except that produced and exported by Woo Sung or Dae Sung, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond equal to 0.78 percent *ad valorem* for each entry of this merchandise.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the date of this determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury exists, we will issue a countervailing duty order, directing Customs officers to continue to suspend liquidation and to collect cash deposits on all entries of stainless steel cooking ware from Korea entered, or withdrawn from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). Petitioner submitted a request for a hearing, which was subsequently withdrawn with the consent of respondents. Written views have been received and were considered in reaching this final determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

November 19, 1985.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-26662 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

Sorbitol From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on sorbitol from France. The review covers one manufacturer/exporter of this merchandise to the United States and consecutive periods from June 1, 1982 through March 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Maureen Rosch or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 29143) the preliminary results of its administrative review of the antidumping duty order on sorbitol from France (47 FR 15391, April 9, 1982). We began this review under our old regulations. After the promulgation of our new regulations, one respondent, Roquette Freres, requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of crystalline sorbitol. Crystalline sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is used in the production of sugarless gum, candy, groceries, and pharmaceuticals. Crystalline sorbitol is currently classifiable under item 493.6820 of the Tariff Schedules of the United States Annotated.

The review covers one French manufacturer/exporter of crystalline sorbitol to the United States, Roquette Freres, and consecutive periods from June 1, 1982 through March 31, 1985.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from those we presented in the preliminary results, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Roquette Freres	06/01/82—03/31/83	0.70
	04/01/83—03/31/84	0.96
	04/01/84—03/31/85	0.21

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, since the most recent margin is less than 0.50 percent and, therefore, *de minimis*, the Department waives the estimated antidumping duty cash deposit requirement. The waiver applies to shipments of French sorbitol entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 21, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-26659 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-601]

Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Cooking Ware From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain stainless steel cooking ware from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of this merchandise from Korea. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of certain stainless steel cooking ware from Korea that are entered, or withdrawn from warehouse, for consumption, on or after July 7, 1986, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort, Carole Showers, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-0186 (Letort), 202/377-3217 (Showers), or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain stainless steel cooking ware from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) [19 U.S.C. 1673d(a)]. We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, August 1, 1985, through January 31, 1986. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We have also determined that critical circumstances do not exist with respect to imports of this merchandise from Korea.

Case History

On January 21, 1986, we received a petition from the Fair Trade Committee

of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures stainless steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports materially injure, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on February 10, 1986 (51 FR 6018—February 19, 1986). On March 7, 1986, the ITC preliminarily determined that there is reasonable indication that imports of certain stainless steel cooking ware from Korea are materially injuring a U.S. industry (51 FR 9541—March 19, 1986).

On March 21, 1986, we presented antidumping duty questionnaires to Bum Koo Industrial Co., Ltd. (Bum Koo), Dae Sung Industrial Co., Ltd. (Dae Sung), Hai Dong Stainless Industries Co. (Hai Dong), Kyung Dong Industrial Co., Ltd. (Kyung Dong), and Namil Metal Co., Ltd. (Namil). These companies accounted for at least 60 percent of exports of the subject merchandise from Korea to the United States during the review period. Respondents were requested to answer the questionnaires within 30 days. On April 16, 1986, counsel for respondents requested extensions for submission of questionnaire responses. This request was granted on April 17, 1986. On April 29 and May 12, 1986, we received responses to our questionnaires.

Dae Sung, Hai Dong, Kyung Dong, and Namil submitted supplemental computer tape responses on June 10, 16, 17, and 18, 1986, too late to be considered for our preliminary determination. This information was verified and has been used in this final determination.

On March 5, 1986, we received from petitioner an allegation that a Korean trading company, Sammi Corporation (Sammi), sold the subject merchandise in the United States during the review period at prices below its cost of acquisition plus selling expenses (*i.e.*, "middleman dumping"). We requested that petitioner submit information which was reasonably available, providing evidence of middleman dumping, so that we could determine whether an investigation was warranted. Since trading companies typically operate at small mark-ups, and presumably do not take losses, we require some specific evidence that the trading company is, in fact, dumping before initiating an investigation with respect to the trading company. Petitioner cited an ongoing predatory pricing lawsuit against Sammi's U.S. subsidiary, Ken Carter Industries, Inc., and submitted several public documents obtained from that lawsuit, including allegations that Ken Carter sustained significant losses on its U.S. sales of stainless steel kitchenware (which include a large number of products not subject to our investigation). None of the documents submitted contained any pricing or cost data for Ken Carter or Sammi. After examining these documents, we determined that, without more direct evidence, these documents did not provide a sufficient basis upon which to initiate an investigation of the alleged middleman dumping by Sammi.

On May 30, 1986, petitioner alleged that home-market and third-country sales of the subject merchandise were made by respondents at prices below their costs of production. On June 23, 1986, we sent respondents supplemental questionnaires requesting that they submit certain cost of production information. Because of the late filing of this allegation, we did not analyze cost of production data for purposes of the preliminary determination. We are addressing this issue fully in this final determination.

On May 23, 1986, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise from Korea. On June 30, 1986, we made our preliminary affirmative antidumping duty determination (51 FR 24563—July 7, 1986). We stated in our notice that we preliminarily determined that critical circumstances do not exist in this case. We also stated that we expected to issue a final determination by September 15, 1986.

On July 1, 1986, respondents requested that the deadline for the final antidumping duty determination be extended to 135 days after the publication date of the preliminary determination in the **Federal Register**. We granted an extension on August 1, 1986 (51 FR 28610—August 8, 1986) and stated that we expected to issue a final determination no later than November 19, 1986.

From July 31 to August 16, 1986, we verified the home-market, third-country, and purchase price sales information provided by the respondents at the offices of Bum Koo, Dae Sung, Hai Dong, Kyung Dong, and Namil in Korea. From August 25 to September 9, 1986, we verified the cost-of-production information submitted by the respondents at the offices and manufacturing plants of Bum Koo, Dae Sung, Hai Dong, Kyung Dong and Namil in Korea. On October 9 and 10, 1986, we verified the exporter's sales price information submitted by Kyung Dong at the offices of Kyung Dong New Jersey (KDNJ) in Rutherford, New Jersey.

We received amended responses, based on information previously verified, from Bum Koo on August 22, 1986, from Namil on September 23, 1986, from Kyung Dong on September 25 and October 31 1986, from Dae Sung on October 8, 1986, and from Hai Dong on October 8 and October 31, 1986.

Scope of Investigation

The products covered by this investigation are non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper, or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 TSUS item number. This investigation covers the period from August 1, 1985, through January 31, 1986.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. For purposes of this final determination, we used purchase price, exporter's sales price, home market and third-country sales prices, and constructed values provided in the responses.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, where the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated the purchase price based on the packed FOB, CIF, or C&F duty-paid price to unrelated purchasers in the United States or to unrelated trading companies for sales to the United States, as appropriate. We made deductions, where appropriate, for inland freight,

ocean freight, marine insurance, brokerage and handling charges, U.S. customs duties, and other charges such as inspection fees, service charges, and container freight station charges (wharfage).

For those sales made out of inventory by Kyung Dong's related importer in the United States, we used exporter's sales price to represent the United States price, as provided in section 772(c) of the Act, because the merchandise was sold to an unrelated purchaser after importation into the United States. For those sales, we made additional deductions, where appropriate, for U.S. brokerage expenses, U.S. customs duties, U.S. inland freight and insurance, U.S. wharfage charges, sales commissions, credit expenses, advertising costs, and other selling expenses incurred on sales to the United States.

We made additions to purchase price and exporter's sales price for duty drawback, *i.e.*, import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act. With respect to Bum Koo, Hai Dong, Kyung Dong, and Namil, we note that, in the parallel countervailing duty investigation of the subject merchandise, we found that a portion of the duty drawback received by these respondents was based on materials which were not physically incorporated into the finished product. We did not reduce, however, the amount of the duty drawback adjustment in this case to reflect the excessive rebate of import duties, for the reasons described in DOC response to petitioner's comment 3.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home-market sales, third-country sales and, where appropriate, constructed values. In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value for Bum Koo and Kyung Dong based on home-market prices of such or similar merchandise. Since the remaining companies had no viable home market, in accordance with section 773(a)(1)(B) of the Act and § 353.5 of our regulations, we calculated foreign market value for Hai Dong, Namil, and Dae Sung based on third-country sales of such or similar merchandise. In the case of Hai Dong and Namil, no single third country met the criteria of § 353.5(d) of our regulations and still provided an adequate number of sales. Thus, we aggregated sales to a number of third countries to calculate foreign market value. In the case of Dae Sung, we used the third country with the largest value of sales for our price-to-price comparisons.

For Bum Koo and Kyung Dong, we based our calculations of foreign market value on ex-factory or delivered, packed prices to unrelated purchasers in the home market. We made adjustments for differences in commissions, credit, and advertising expenses, where appropriate. We subtracted home-market packing and added U.S. packing to all home-market prices. For some home-market sales used for comparison to purchase price transactions, sales commissions were paid in one market and not the other. Pursuant to § 353.15(c) of our regulations, we made adjustments for differences between commissions paid in one market and indirect selling expenses, which were used as an offset to the commissions, in the other market, where available. We also made an adjustment for the differences in commissions paid in the two markets, where appropriate, in accordance with § 353.15(b) of our regulations. Where we used exporter's sales price, we used home market indirect selling expenses to offset U.S. selling expenses.

Consistent with our past practice, we disallowed Kyung Dong's claimed circumstance-of-sale adjustment for bad debts incurred on certain home-market sales, but included the bad debt loss in homemarket indirect selling expenses.

As stated previously, for Hai Dong, Namil, and Dae Sung we based our calculations of foreign market value on the packed, FOB, CIF, or C&F price to unrelated purchasers in third countries. We made deductions, where appropriate, for inland freight, ocean freight, marine insurance, brokerage and handling charges, and other direct selling expenses such as inspection fees, service charges, and container freight station charges (wharfage). We subtracted third-country packing and added U.S. packing. We also made an addition to third-country prices for import duties which were rebated by reason of exportation of the merchandise to third countries. Where appropriate, we made adjustments for commissions and credit expenses. In the case of some third-country sales used for comparison to purchase price sales, commissions were paid in one market and not the other. Pursuant to § 353.15(c) of our regulations, we made adjustments for differences between commissions paid in one market and indirect selling expenses, which was used as an offset to the commissions, in the other market. We also made an adjustment for the differences in commissions paid in both markets, where appropriate.

Where there was no identical product in either the home market or the third-country market with which to compare a product sold in the United States, we made an adjustment to account for differences in the physical characteristics of the merchandise, where possible, in accordance with section 773(a)(4)(C) of the Act.

Cost of Production/Constructed Value

In accordance with section 773(a)(2) of the Act, we supplemented home-market and third-country sales prices with constructed values when there were insufficient sales of such or similar merchandise above cost in the home market or third country. Constructed values were based on the responses, using actual material and fabrication costs. We made the following adjustments to the data submitted by the respondents:

1. Bum Koo

a. We included import duties in the cost of manufacture in calculating cost of production and constructed value since we added duty drawback to United States price.

b. We annualized the respondent's depreciation and adjusted it to reflect certain recently acquired assets.

c. We adjusted general, selling and administrative expenses by imputing interest to certain interest-free loans received from related parties.

d. We recalculated general, selling and administrative expenses based on the cost of goods sold, rather than on the cost of manufacture.

e. We reclassified labor for consumer packing as a fabrication cost.

f. We reallocated consumer packing materials to the cost of manufacture.

2. Dae Sung

a. We corrected a mathematical error in the cost of materials submitted by the respondent.

b. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

c. We disallowed income accruing from a sale of obsolete cooking ware originally ordered by a customer in Iran as an offset to the cost of production.

d. We did not include duty drawback in the cost of production because, in determining whether third-country sales were below cost, we did not add duty drawback to third-country sales prices.

e. We reclassified a portion of labor expenses for outer packing as labor expenses for consumer packing, and treated this portion as a fabrication cost.

3. Hai Dong

a. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

b. We increased material costs to reflect the respondent's actual raw material wastage rate, rather than the standard government wastage rate.

c. He reallocated consumer packaging expenses to the cost of manufacture.

d. We did not include duty drawback in the cost of production because, in determining whether third-country sales were below cost, we did not add duty drawback to third-country sales prices.

4. Kyung Dong

a. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

b. We added an imputed credit cost to general, selling and administrative expenses in order to reflect home-market credit expenses, and deducted an amount from interest expenses so that interest expenses related to credit would not be double-counted.

c. We recalculated general, selling and administrative expenses based on the cost of goods sold, rather than on the cost of manufacturing.

5. Namil

a. We reclassified a portion of labor expenses as packing labor.

b. We reallocated certain plant management expenses, such as wages for cafeteria cooks, security guards, and motor pool drivers, from general, selling and administrative expenses to fabrication costs.

c. We did not include duty drawback in the cost of production because, in determining whether third-country sales were below cost, we did not add duty drawback to third-country sales prices.

d. We recalculated the recovery value for scrap based on actual, rather than theoretical, wastage rates.

e. We added an imputed credit cost to general, selling and administrative expenses in order to reflect home-market credit expenses, and deducted an amount from interest expenses so that interest expenses related to credit would not be double-counted.

We based constructed values for all the respondents on their costs of production, which we adjusted as described above.

In cases where the cost of production related to costs incurred on sales to third countries, we included duty drawback in constructed value since duty drawback is added to United States price.

We used actual verified expenses to calculate general, selling and administrative expenses in cases where they exceeded the statutory minimum of 10 percent; in all other cases, we used the statutory minimum. To calculate profit, we used the statutory minimum of eight percent of the total of materials, fabrication, and general expenses. We then added in U.S. packing costs. Based on the information available to us at the time of the preliminary determination, we were unable to make circumstance-of-sale adjustments to constructed values. We have made these circumstance-of-sale adjustments in this final determination.

Currency Conversions

In calculating foreign market value, we made currency conversions from Korean won to U.S. dollars in accordance with § 353.56(a)(1) of our regulations, using certified daily exchange rates as furnished by the Federal Reserve Bank of New York. For exporter's sales price comparisons, we used the official exchange rate on the date of sale, since using the exchange rate as of the date of sale is consistent with section 615 of the Trade and Tariff Act of 1984 (the 1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, because the later law supersedes that section of the regulations.

Verification

We verified all information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, which included examination of relevant sales and financial records of the company.

Petitioner's Comments

Comment 1. Petitioner states that respondents have made sales in the home market and in third country markets at prices below the cost of producing the merchandise. Petitioner further contends that these sales: (1) Have been made over an extended period of time and in substantial quantities; and (2) are not at prices which permit recovery of all costs within a reasonable period of time. Therefore, petitioner argues that the Department should disregard these sales when calculating foreign market value (FMV).

DOC Position. The Department has investigated petitioner s allegation of belowcost sales and applied its conventional cost viability test to determine which, if any, home-market or third-country sales should be disregarded in the calculation of FMV. Applying this test, if 10 percent or less of a company's home market (or third country) sales of such or similar merchandise were found to have been below cost, we used all sales in our FMV calculations. If between 10 and 90 percent of a company's home-market (or third-country) sales of such or similar merchandise were found to have been below cost, we disregarded those sales in our FMV calculations. If over 90 percent of a company's home-market (or third-country) sales of such or similar merchandise were found to have been below cost, we used constructed value in our FMV calculations.

Comment 2. Petitioner argues that the Department's grouping guidelines for such or similar merchandise are too broad and should be narrowed to allow for more utility and specialty differences in cookware items.

DOC Position. The Department's grouping guidelines for such or similar merchandise meet the criteria of section 771(16) (A) and (B) of the Act. Furthermore, while the grouping guidelines define the outer limits of what products may be compared to each other in making fair value determinations, actual comparisons are based on the most similar merchandise within the individual grouping. Furthermore, difference in merchandise adjustments were made for comparisons between "similar" merchandise.

Comment 3. Petitioner argues that respondents' claim for a duty drawback adjustment to United States price should be denied to the extent it includes drawback on raw material waste. Petitioner further argues that for those companies where FMV is based on third-country sales, drawback should be added to third-country prices.

DOC Position. Section 772(d)(1)(B) of the Act directs the administering authority to add to United States price any import duties which have been rebated upon exportation. No distinction is made between import duties on materials that are physically incorporated into the finished product and import duties on non-physically incorporated materials, including waste.

We note that the countervailing duty law does make such a distinction: Excessive import duty remissions, including unreasonable or excessive

allowances for waste, are countervailable export subsidies. If, in a countervailing duty investigation, we were to find an excessive remission of import duties, we would adjust United States price in our antidumping duty case, in accordance with section 772(d)(1)(D) since this excessive remission would constitute an export subsidy. In that situation, it would be appropriate to limit the amount of drawback added to United States price under section 772(d)(1)(B) to the non-excessive portion of the import duty rebate. To do otherwise, *i.e.*, to add the full amount of the drawback and to make an addition under section 772(d)(1)(D) would result in double-counting.

In the parallel countervailing duty investigation of certain stainless steel cooking ware from Korea, we found that four companies under investigation in that case which are also under investigation in this case, received an excessive rebate of import duties because duties were drawn back on inputs that were not physically incorporated into the exported product. This over-rebate, however, was *de minimis*. Therefore, we did not adjust United States price under section 772(d)(1)(D) for this export subsidy, nor did we limit the adjustment under section 772(d)(1)(B) because the effect of the adjustment would have been insignificant.

Where FMV was based on third-country sales, we added duty drawback to transaction prices.

Comment 4. Petitioner argues that since respondents have presented no evidence, and the Department has not verified, that respondents actually paid the import duties which allegedly were rebated on steel purchased from Sammi Corporation, no drawback adjustment should be granted.

DOC Position. We disagree. We verified that for each duty drawback received, even on steel purchased from Sammi, respondents had to present a certificate of duties paid and an export permit showing the amount of steel incorporated into the exported product. Since the respondents were the actual holders of the certificate of duties paid, and only one such certificate was issued for each importation, it is reasonable to assume that the respondents indirectly paid the import duties on steel purchased from Sammi in the price they paid for the steel.

Comment 5. Petitioner argues that duty drawback should not be added to the United States price because respondents have failed to provide sufficient documentation for the allowance.

DOC Position. We disagree. We believe that respondents have provided us with sufficient documentation to justify the allowance of an adjustment for duty drawback. Furthermore, in a similar situation, the Court of International Trade ruled that the Department's determination regarding what constitutes sufficient documentation to justify the allowance of a duty drawback was reasonable (see *Huffy Corp.* v. *United States*, Slip Op. 86–36. 11 CIT____, March 27, 1986).

Comment 6. Petitioner argues that an over-rebate of import duties is likely to have occurred with respect to certain products for the following reasons: (1) In claiming duty drawback, respondents did not differentiate between various types of stainless steel, each type being associated with a discrete cost and dutiable value; and (2) in claiming duty drawback for materials used in the production of its cookware, respondents did not differentiate between these different types of raw materials and are seeking an adjustment without regard to either the composition of the exported product or to whether the raw materials are physically incorporated into the exported article.

DOC Position. We disagree. Contrary to petitioner's assertion, for each duty drawback, the required export permit contains specific weights and gauges of materials incorporated into the finished products. We verified that respondents received duty drawbacks on imported steel only to the extent (weight and gauge) that the steel is incorporated into the exported product plus an estimated waste allowance authorized by the government. See also our response to petitioner's comment 3 regarding excessive import duty remissions for wastage and non-physically incorporated inputs.

Comment 7. Petitioner states that, based upon verification reports, respondents have sales of seconds or rejects only in the home market. Petitioner argues that these sales should be disregarded in determining FMV, as is the Department's practice, when such sales are present in only one market.

DOC Position. We agree. We did not include sales of seconds or rejects in our FMV calculations.

Comment 8. Petitioner argues that the Department should compare sales of sets to sales of sets or, at the very least, set components to set components, to avoid a distortion of the dumping margin.

DOC Position. Where sets sold in the U.S. market were similar to sets sold in the home market, we compared sets in both markets. In certain instances, however, the sets sold by the respondents in the United States were of an entirely different composition from the sets sold in the home market. Therefore, we determined that it was reasonable to compare set components to set components, as long as the component prices were arrived at by the same method of allocation in both markets. In the case of Kyung Dong, however, we were unable to distinguish set pieces from open-stock pieces because of inconsistencies in the computerized data submitted by the company.

Comment 9. Petitioner argues that in making price-to-price comparisons, the Department must account for differences in consumer packaging between the U.S. market and the home (or third-country) market by way of a difference-in-merchandise adjustment pursuant to 19 CFR 353.16.

DOC Position. We agree. Any difference in consumer packing is reflected in difference-in-merchandise adjustments.

Comment 10. With regard to Kyung Dong, petitioner argues that respondent's claimed adjustment for level-of-trade differences should be denied. Petitioner contends that, in order to qualify for a level-of-trade adjustment, respondent must prove, and the Department must verify, the existence of two facts: (1) That the respondent incurred consistently different costs in selling to customers in one level of trade and not in the other; and (2) that the difference in the respondent's selling costs have a direct and consistent relationship to differences in prices charged to various types of customers.

DOC Position. Kyung Dong never requested the Department to make a level-of-trade adjustment. The respondent did, however, request that sales to the United States be compared only to home-market sales made in similar quantities and under similar circumstances. Kyung Dong classified its home-market sales into four categories: (1) Sales to department stores; (2) sales to wholesalers; (3) door-to-door sales; and (4) sales to company employees and sales of defective goods. Kyung Dong claims that U.S. sales should be compared only to sales to wholesalers because the quantities and circumstances of these sales are most similar to Kyung Dong's sales in the U.S. market. Respondent could not substantiate this claim during verification. Therefore, for purposes of this determination, we compared sales in the U.S. market to all home-market sales, except for sales to employees and sales of defective goods.

Comment 11. With regard to Kyung Dong, petitioner argues that the Department should follow its usual practice in classifying bad debt as indirect selling expenses and deny this claimed adjustment to home-market sales.

DOC Position. We agree. The Department has consistently treated bad debt losses as indirect selling expenses because they are not, by their very nature, directly tied to sales.

Comment 12. With regard to Kyung Dong, petitioner argues that the claimed adjustment for advertising expenses should be denied because it is based on the following faulty premises: (1) Portions of advertising expenses claimed are for expenses incurred for institutional advertising; (2) advertising for multi-product advertising was improperly allocated over sales of cooking ware in the home market, instead of using an allocation based on the relative size of advertisement for each product under investigation; (3) advertising was incorrectly included for items not used to establish FMV in calculating selling expense; and (4) respondent failed to list, or apply, any advertising expenses incurred by Kyung Dong New Jersey (KDNJ) to purchase price transactions.

DOC Position. We disagree. We verified that all advertising expenses claimed by Kyung Dong and KDNJ were allowable as a circumstance-of sale adjustment under our regulations and that the respondent's method of allocating advertising expenses was proper.

Comment 13. With regard to Kyung Dong, petitioner contends that respondent has overstated its home-market credit expense by basing it on an interest rate greater than the benchmark used in the countervailing duty (CVD) investigation involving the same company and product. Petitioner argues that Kyung Dong, as well as other respondents, should be required to calculate credit expenses based on an interest rate no higher than the benchmark used in the CVD case. Petitioner argues further that since the Department could not verify the average time that credit was extended by Kyung Dong, the claimed adjustment for credit expense must be denied.

DOC Position. In CVD investigations, we use a national short-term benchmark to measure the benefit arising from subsidized short-term loans, in accordance with the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006—April 26, 1984). This is because we seek the cost of the most comparable alternative source of financing to government-subsidized loans. In an antidumping investigation, however, we measure a company's actual cost of credit, and use this amount to compute the company's credit expenses, because it is that cost which affects the company's pricing policies.

Comment 14. With regard to Kyung Dong, petitioner argues that the claimed duty drawback adjustment should be reduced to the extent it is based on drawback of duties paid on chemicals which are not physically incorporated into the exported item.

DOC Position. Kyung Dong did receive duty drawback on emery powder and chromic oxide, which are used in the washing and polishing of cooking ware, and are not physically incorporated into the exported product. However, we did not make an adjustment to Kyung Dong's duty drawback, because deducting this portion of the drawback would not have a significant effect on the calculation of the dumping margin. *See* also, DOC response to petitioner's comment 3.

Comment 15. With regard to Kyung Dong, petitioner contends that its claimed adjustment to FMV for inland freight for home-market shipments is significantly overstated. Petitioner argues that any home-market deliveries of Kyung Dong cooking ware by its employees using company-owned trucks cannot qualify as an inland freight adjustment to FMV, and that respondent's inability to segregate its expenses for delivering cooking ware necessarily overstates these costs.

DOC Position. We agree with petitioner, and have not adjusted FMV for foreign inland freight because Kyung Dong was unable to provide any documentation for its estimated calculation of inland freight expenses.

Comment 16. With regard to Kyung Dong, petitioner argues that all sales made through KDNJ meet the criteria for, and should be treated as, exporter's sales price (ESP) transactions. Petitioner further argues that in the event the Department does not treat all KDNJ sales as ESP transactions, the Department should impute an appropriate commission factor to be deducted from purchase price.

DOC Position. Kyung Dong received the customer's sales orders through KDNJ for certain sales to the United States. Since these sales occurred prior to the date of importation and KDNJ merely transmitted the order to Kyung Dong, we consider these sales to be purchase price sales, as defined in section 772 of the Act. Furthermore, we do not impute commissions in purchase price transactions.

Comment 17. With regard to Dae Sung, petitioner states that respondent failed to set forth sales data for one of its five largest third-country markets, thereby leaving the Department without a full set of data for comparisons with third-country sales. Therefore, petitioner argues that the Department should use best information available, drawing inferences adverse to Dae Sung, for those United States sales disregarded in the preliminary determination; or at the minimum, should use constructed value as the basis of comparison for those sales.

DOC Position. We disagree with petitioner. Dae Sung did not report its sales to its second-largest third-country market because the vast majority of sales to that market consisted of merchandise that fell outside the scope of this investigation.

Comment 18. With regard to Dae Sung, petitioner contends that since respondents paid commissions on both third-country and United States sales, its claim for offsetting commissions paid in the U.S. market with indirect selling expenses is inappropriate.

DOC Position. We agree. Commissions were paid on both U.S. sales and on third-country sales. Therefore, we made a circumstance of sale adjustment based on the difference in the commissions paid in both markets.

Comment 19. With regard to Bum Koo, petitioner submits that the Department should follow its normal practice and disregard Bum Koo's drawback adjustments because a response correcting its improperly calculated drawback claim was not submitted prior to verification.

DOC Position. In its original submission, Bum Koo incorrectly made a claim for duty drawback on its home-market sales, which we disallowed in our preliminary determination. The company subsequently amended its response and correctly claimed a duty drawback adjustment to sales to the United States. We verified this amended response.

Comment 20. With regard to Bum Koo, petitioner argues that U.S. commissions are not subject to offset because respondent has not claimed, nor has the Department verified, any indirect selling expenses incurred by Bum Koo in the home market.

DOC Position. We agree. No offsets were made for commissions paid in the United States.

Comment 21. With regard to Hai Dong, petitioner argues that

respondent's adjustment for a commission offset must be limited to home market indirect selling expenses or to U.S. commissions, whichever is less, in accordance with § 353.15(c) of our regulations.

DOC Position. We agree. As there were no home-market sales, for each U.S. sale for which a commission was paid, we compared the commission to the verified indirect selling expenses for third-country sales and applied the commission offset.

Comment 22. With regard to Namil, petitioner contends that if respondent has reported a lower sale price than that actually charged to the third-country customer due to Namil's deductions for exchange rate losses or trading company mark-up, then the third-country price should be the contract sale price, not Namil's net receipts on such sales.

DOC Position. We disagree. The proper sale price to use in fair value comparisons is the price actually received from the customer based on the respondent's net receipts.

Comment 23. Petitioner argues that certain plant management expenses, such as wages for cafeteria cooks, plant security guards, and bus drivers were improperly included in general, selling and administrative expenses by the respondents instead of factory overhead. These expenses should be included in the cost of manufacture for purposes of the final determination.

DOC Position. We agree. Because these expenses are necessary for the operation of the manufacturing plant, we have reclassified them as factory overhead expenses and included them in the cost of manufacture.

Comment 24. Petitioner argues that respondents' claimed adjustment to production costs for duty drawback should be denied because (a) it includes rebates of import duties levied on raw materials which are not physically incorporated into the exported merchandise, but rather are wasted as part of the production process, and (b) because official Korean Customs loss rates on which duty drawback payments are based exceed the respondents' actual loss rates.

DOC Position. As explained in the "Cost of Production/Constructed Value" section of this notice, we included duty drawback in the cost of production of home-market sales and did not include it in the cost of production for third-country sales.

Comment 25. Petitioner argues that consumer packing labor costs should be included in the cost of materials and fabrication expenses for purposes of constructed value calculations, because such packing is part of the product sold to the consumer or end-user.

DOC Position. We agree with petitioner, and have included the materials, labor, and factory overhead expenses related to consumer packing in the cost of manufacture.

Comment 26. Petitioner claims that respondents should not be allowed to offset interest expenses by certain non-operating interest income, such as dividends and interest on bank accounts.

DOC Position. We agree with petitioner. Interest income which does not result from production or sales of the products under investigation is not related to those products.

Comment 27. Petitioner contends that the respondents' cost of materials should include the 2.5 percent defense tax levied on all imported raw materials.

DOC Position. We agree with petitioner. The defense tax was included in the respondents' materials costs with respect to home-market production costs. Since this tax is rebated upon exportation of the finished product, we did not include it in the cost of production for third-country sales.

Comment 28. Petitioner contends that the Department has failed to specify whether the value-added tax (VAT) paid on imported raw materials was refunded upon exportation of the finished product. In addition, because the VAT levied on home-market sales is not refunded but rather passed through to the consumer, it should be included in the cost of production in determining whether home-market sales were made at prices lower than the cost of production.

DOC Position. We disagree with petitioner. The VAT is collected by the respondents who pass it on to Korean tax authorities. Furthermore, sales prices submitted by respondents were net of VAT. Therefore, we did not include VAT in production costs.

Comment 29. Petitioner believes that all export-related direct selling expenses should be included in general, selling and administrative expenses.

DOC Position. We have included in general, selling and administrative expenses all direct selling expenses related to sales of these products in the appropriate markets. We did not include transportation and other ex-factory expenses, however, since the cost of production is compared to an ex-factory price for purposes of the below-cost test.

Comment 30. Petitioner affirms that annual bonuses paid to employees should be prorated over the period of investigation, classified as factory overhead, and not included in general, selling and administrative expenses.

DOC Position. We included the *pro rata* portion of employee bonuses in fabrication costs, not in general, selling and administrative expenses.

Comment 31. Petitioner argues that Kyung Dong's capitalized expenses for molds, which were not included in depreciation, should be reclassified as factory overhead and included in the cost of manufacture for purposes of the final determination.

DOC Position. We revised depreciation expenses to include the depreciation of molds, and treated these as factory overhead included in the cost of manufacture.

Comment 32. Petitioner contends that Namil double-counted scrap revenue as an offset to both material costs and general, selling and administrative expenses.

DOC Position. We agree with petitioner. Where submitted scrap offsets reflected amounts other than actual scrap recovery, we adjusted material costs to reconcile with actual scrap sales and inventory quantities. We did not include material scrap recovery as non-operating income in general, selling and administrative expenses.

Comment 33. Petitioner argues that, in calculating Namil's production costs and constructed value for purposes of the final determination, the Department should use general, selling and administrative expenses for the period of investigation rather than an average for calendar year 1985.

DOC Position. We agree with petitioner. We made certain adjustments to reflect Namil's general, selling and administrative expenses during the period of investigation.

Comment 34. Petitioner contends that losses sustained by Namil as a result of a warehouse fire which occurred during the period of investigation are a cost of doing business and should be included in the respondent's production costs.

DOC Position. Since the loss of the materials resulting from the fire would not have been considered a cost related solely to current operations, this loss should be amortized over a reasonable period of time. This relatively insignificant loss would have no effect on production costs during the period of investigation. Therefore, we did not include this loss in the cost of production.

Comment 35. Petitioner argues that the Department should disregard any cost-of-production information submitted by Bum Koo during the verification unless such information is more detrimental to the respondent than

the best information otherwise available.

DOC Position. We used the cost information submitted by Bum Koo when it could be verified. Most of the changes to the submitted cost-of-production information resulted from differences in methodology, not because the data could not be verified.

Comment 36. Petitioner argues that import duties paid by Bum Koo on raw material inputs should be included in the respondent's production costs.

DOC Position. We agree. We adjusted Bum Koo's production costs to include duty drawback, since the cost of production was related to home-market sales.

Comment 37. With respect to Bum Koo, petitioner argues that general, selling and administrative expenses should be allocated over the cost of goods sold rather than over the cost of manufacture, which significantly understates such expenses.

DOC Position. We agree with petitioner. We used the cost of goods sold to calculate the percentage of general, selling and administrative expenses in cases where respondents used a different methodology.

Comment 38. Petitioner contends that the Department should disallow the theoretical scrap offset claimed by Bum Koo because actual usage rates and money amounts received were not verified.

DOC Position. We obtained actual scrap data during verification and appropriately adjusted the theoretical scrap offset to actual usage rates.

Comment 39. With respect to Bum Koo, petitioner argues that the Department should include the respondent's research and development expenses in the cost of manufacture because the nature of these expenses was neither explained nor verified.

DOC Position. Since the respondent could not document the nature of the research and development expenses, a portion of these expenses was included in general, selling and administrative expenses.

Comment 40. Petitioner argues that, because the Department was unable to verify Bum Koo's standard labor and machine time expenses for the products under investigation, we must base our final determination on best information otherwise available in calculating such expenses.

DOC Position. During verification, we ascertained that Bum Koo had accounted for all labor and and factory overhead. We compared the results of Bum Koo's allocation to the data submitted by the other respondents, which was in the official record of this case, and determined that the amount allocated by Bum Koo was reasonable.

Comment 41. With respect to Bum Koo, petitioner contends that the Department should allocate depreciation for new equipment acquisitions per production volume by quarter in order to include the appropriate expenses for such new equipment in the respondent's cost of manufacture.

DOC Position. We agree with petitioner. We reviewed depreciation on assets acquired during the year and, where appropriate, made adjustments ensuring that these expenses were accounted for in the correct period.

Comment 42. Petitioner argues that the Department should impute interest expenses to general, selling and administrative expenses on all interest-free loans Bum Koo received from related parties.

DOC Position. We agree with petitioner. We imputed interest expenses on all interest-free loans received by Bum Koo from related parties to reflect the prevailing market cost of comparable loans from commercial sources.

Comment 43. Petitioner argues that Dae Sung's material costs were understated because they were based on standard government usage rates, rather than on the respondent s lower actual usage rates.

DOC Position. We used the respondent's actual verified scrap rates.

Comment 44. With regard to Dae Sung, petitioner argues that scrap revenue derived from 1985 sales of cooking ware produced in 1981 for a customer in Iran is non-operating revenue and should not be allowed as an offset to general, selling and administrative expenses.

DOC Position. We agree with petitioner. The sale of cooking ware originally destined for Iran which was sold during 1985 was not a result of production during that period of time. Therefore, we did not use the sale of obsolete inventory to offset the cost of production during the period of investigation.

Respondents' Comments

Comment 1. Respondents contend that the purpose of duty drawback is to reimburse the exporter for the duty paid on the amount of raw materials *required* to produce a given quantity of finished product, *i.e.*, including waste, and not, as petitioner argues only on the raw materials that are actually physically incorporated into the exported product, *i.e.*, not including waste. Respondents further contend that their argument is supported by section 772(d) of the Act and that the Korean system completely complies with these statutory criteria. Therefore, respondents argue that the full amount of the duty drawback received for steel should be allowed as an adjustment.

DOC Position. See response to petitioner's comment 3.

Comment 2. Respondents argue that since Korean duty drawback procedures are the same for both U.S. and third-country sales, the Department must be consistent in its duty drawback adjustments.

DOC Position. We agree. We have added duty drawback to both United States price and third-country price.

Comment 3. Kyung Dong contends that the bad debt it incurred as a result of uncollected invoices to two customers, one which went bankrupt and one which is presently serving a jail sentence, is distinguishable from the bad debt generally classified by the Department as an indirect selling expense. Respondent argues that the bad debt they incurred unquestionably falls within the statutory and regulatory construct for circumstance-of-sale adjustment. If this circumstanceof-sale adjustment is disallowed, respondent requests that fifty percent of its verified write-off amount for bad debt for fiscal 1986 be included among its home-market indirect selling expenses.

DOC Position. We disagree. *See* response to petitioner's comment 11.

Comment 4. Kyung Dong argues that its adjustment for advertising expenses in the home market is reasonably calculated and fully verified and, hence, there is no need for modification. Similarly, respondent argues. KDNJ's advertising expenses are properly allocated to its ESP sales only.

DOC Position. See response to petitioner's comment 12.

Comment 5. Kyung Dong states that it imports emery powder and chromic oxide for use in its cookware production, and applies for and receives a rebate of duties paid on them upon exportation of its merchandise. Therefore, respondent argues that its purchase price and ESP sales should be increased by the amount of duties which were rebated "by reason of the exportation of the merchandise to the United States," as stated in the antidumping duty law [19 U.S.C. 1677a(d)(I)].

DOC Position. See response to petitioner's comments 3 and 14.

Comment 6. Kyung Dong argues that the calculation of its foreign inland freight costs for merchandise Kyung Dong delivers itself is a reasonable estimate in light of the fact that it maintains no records of what specific

shipments are carried in which vehicles at what time. Respondent further argues that there is no reason to believe that this estimate in anyway distorts reality, and submits that the estimate was fully verified, as was the non-existence of reasonable alternatives.

DOC Position. We disagree. *See* response to petitioner's comment 15.

Comment 7. Dae Sung states that information was provided to the Department on commissions paid for U.S. sales and for third-country sales, and on indirect selling expenses. Respondent argues that the Department should permit commission offsets consistent with Department policy, the statute, and the regulations (19 U.S.C. 1677b and 19 CFR 353.15).

DOC Position. See response to petitioner's comment 18.

Comment 8. Respondents contend that it was entirely proper for Dae Sung not to have reported its sales to its second-largest third-country market because the vast majority of sales to that market consisted of merchandise that fell outside the scope of this investigation.

DOC Position. We agree with respondents. *See* response to petitioner's comment 17.

Comment 9. With respect to Dae Sung's scrap sale in 1985 of cooking ware produced for an Iranian customer in 1981, respondents argue that Dae Sung incurred expenses during 1985 in attempting to sell this merchandise. Therefore, the revenue from this scrap sale should be allowed as an offset to general, selling and administrative expenses.

DOC Position. We disagree. *See* response to petitioner's comment 44.

Comment 10. Hai Dong argues that it is entitled to a commission offset on the basis of its indirect selling expenses, which were verified by the Department.

DOC Position. See response to petitioner's comment 21.

Comment 11. Respondents argue that certain plant management expenses, such as wages for cafeteria cooks, plant security guards, and bus drivers were properly included in general, selling and administrative expenses, because these expenses are not related to any particular operation or product but rather relate to overall company operations.

DOC Position. We disagree. *See* response to petitioner's comment 23.

Comment 12. Respondents contend that their claimed duty drawback adjustment to production costs should be allowed because (a) petitioner relied on a mistaken comparison of Korean government input ratios with company loss percentages in concluding that duty drawback made an excessive allowance for waste, (b) Korean government loss percentages are consistent with the respondents' loss percentages, and (c) in the case of Hai Dong, the respondent submitted steel costs that were based on government waste rates and verified.

DOC Position. See response to petitioner's comment 24.

Comment 13. Respondents contend that, contrary to petitioner's assertion, interest expenses were not offset by non-operating interest revenues in calculating general, selling and administrative expenses. Non-operating interest income was included in general, selling and administrative expenses only to the extent of non-operating interest expenses. Therefore, no interest expenses were offset by interest income.

DOC Position. We only included interest income as an offset when it was related to production or sales of products under investigation.

Comment 14. Respondents argue that, contrary to petitioner's assertion, the value added tax (VAT) is not a cost of production because it is passed through by the respondents to their customers or end-users. With respect to Kyung Dong, the VAT should be excluded from production costs for purposes of determining whether home-market sales were made at prices below production costs, because Kyung Dong reported its home-market sale prices net of VAT.

DOC Position. See response to petitioner's comment 28.

Comment 15. Respondents contest petitioner's assertion that employee bonuses should be included in factory overhead and prorated into general, selling and administrative expenses. Respondents claim they properly included bonuses for factory workers and managers in the cost of manufacture, and bonuses for administrative workers and managers in general, selling and administrative expenses.

DOC Position. We agree with respondents on this issue.

Comment 16. With respect to Namil, respondent contests petitioner's assertion that scrap offsets were double-counted. Rather, respondent argues that Namil's income statement reflects a revaluation of year-end scrap inventory, and not sales of scrap merchandise.

DOC Position. See response to petitioner's comment 32.

Comment 17. With respect to Namil's losses in a warehouse fire, respondents argue that fire losses should not be included in production costs because a fire is not a cost of doing business. Fire insurance, however, is a cost of doing business and was included in fixed factory overhead.

DOC Position. See response to petitioner's comment 34.

Comment 18. With respect to Namil, in response to petitioner's contention that the Department should use general, selling and administrative expenses for the period of investigation rather than an average for calendar year 1985, respondents argue that Namil's books are closed once a year. Therefore, the only real figure for general, selling and administrative expenses is the calendar year figure and the figure for the period of investigation is only an estimate.

DOC Position. See response to petitioner's comment 33.

Suspension of Liquidation. In accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain stainless steel cooking ware from Korea that are entered, or withdrawn from warehouse, for consumption, on or after July 7, 1986, the date of publication of our notice of preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin (percent)
Bum Koo	31.23
Dae Sung	6.11
Hai Dong	12.14
Kyung Dong	28.28
Namil	1.36
All others	12.40

Article VI ¶5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the November 19, 1986 final affirmative countervailing duty determination on certain stainless steel

cooking ware from the Republic of Korea) will be subtracted from the dumping margins for cash deposit or bonding purposes on imports of certain stainless steel cooking ware from the Republic of Korea, as defined in the "Scope of Investigation" section of this notice.

Critical Circumstances

Petitioner alleged that imports of the subject merchandise from Korea present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports or the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that imports of the subject merchandise from Korea have not been massive over a short period. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case. Therefore, we determine that critical circumstances do not exist with respect to imports of certain stainless steel cooking ware from Korea. We have notified the ITC of this determination.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on certain stainless steel cooking ware from Korea, equal to the amount by which the foreign market value exceeds the United States price.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 353.46 of our regulations (19 CFR 353.46). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 353.47 of our regulations (19 CFR 353.47). No hearing was requested.

Both petitioner and respondents submitted briefs addressing the sales issues arising from the investigation on September 29, 1986, and rebuttal briefs on October 7, 1986. We received additional briefs on cost-of-production and constructed value issues on October 30 and November 3, 1986.

This determination is being published pursuant to section 735(d) of the Act [(19 U.S.C. 1673d(d))].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

November 19, 1986.

[FR Doc. 86-26660 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-603]

Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Cooking Ware From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain stainless steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist only with respect to imports of this merchandise from Taiwan by Song Far Industry Co., Ltd. and Lyi Mean Industrial Co., Ltd. We have notified the U.S. International Trade Commission (ITC) of our determinations. We have also directed the U.S. Customs Service to continue with the suspension of liquidation of all entries of certain stainless steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margins. Furthermore, with respect to Song Far Industry Co., Ltd., and Lyi Mean Industrial Co., Ltd., we have directed the U.S. Customs Service to suspend liquidation retroactively to April 8, 1986, on all unliquidated entries, or withdrawals from warehouse, for consumption as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377-1785 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that certain stainless steel cooking ware from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, August 1, 1985 through January 31, 1986. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist only with respect to imports of this merchandise by Song Far Industry Co., Ltd. and Lyi Mean Industrial Co., Ltd.

Case History

On January 21, 1986, we received a petition filed in proper form by the Fair Trade Committee of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures stainless steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain stainless steel cooking ware from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on February 10, 1986 (51 FR 6019, February 19, 1986), and notified the ITC of our action. On March 7, 1986, the ITC determined that there is a reasonable indication that imports of certain stainless steel cooking ware from Taiwan materially injure, or threaten material injury to, a U.S. industry (51 FR 9541, March 19, 1986).

On March 25, 1986, we presented antidumping duty questionnaires to Golden Lion Metal Industry Co., Ltd. (Golden Lion); Song Far Industry Co., Ltd. (Song Far); and Lyi Mean Industrial Co., Ltd. (Lyi Mean). According to information submitted by the authorities in Taiwan, these companies account for at least 60 percent of exports of the subject merchandise to the United States. Respondents were requested to answer the questionnaire in 30 days.

For Golden Lion, we received responses on April 28 and May 9 and computer tapes on May 20. For Song Far, we received responses on April 29 and May 9, 15, and 16, and received computer tapes on May 23. On May 23, we requested additional information from these two companies. We received supplemental responses from Golden Lion on June 6, 20, 23, and 26, and from Song Far on June 6 and 20.

We granted Lyi Mean an extension until May 30 for submission of its response. We granted an additional extension until June 3, and a subsequent extension until June 16. We received partial responses from Lyi Mean on June 16 and 17. Additional responses were received on June 23. A computer tape was provided on July 3.

On May 23, and June 4, 1986, petitioner alleged that critical circumstances exist with regard to imports from Taiwan of the products under investigation.

On June 13, 1986, petitioner alleged that home market and/or third country sales of the products under investigation were made by Golden Lion and Song Far at prices below their cost of production. On June 23, petitioner further alleged that third country sales of the subject merchandise were made by Lyi Mean at prices below the cost of production. These allegations were received too late to be considered in our preliminary determination. Cost of production questionnaires were presented to the three respondents on July 10. Cost responses were received on August 11 from Golden Lion and Lyi Mean and on August 14 from Song Far. Additional information was requested on August 27. Supplemental cost data were received from Golden Lion on September 3, and 4 and October 8, and from Song Far on September 3, 10, and 25. From September 1 to 26, 1986, we verified the information provided by the respondents at respondents' company offices in Taiwan. In lieu of a hearing, petitioner and respondents simultaneously submitted initial briefs on November 6, and rebuttal briefs on November 10, 1986. We have taken these written views into consideration in this determination.

Scope of the Investigation

The products covered by this investigation are non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 TSUS item number. This investigation covers the period from August 1, 1985, through January 31, 1986.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. For purposes of this determination, we used purchase price information provided by respondents and, as best information available, constructed value information provided by petitioner and respondents for foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, since the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated the purchase price based on the packed f.o.b. or f.o.r. (free on rail) price to unrelated purchasers in the United States or to unrelated trading companies for sales to the United States, as appropriate.

We made deductions for inland freight, brokerage, and cash discounts, where appropriate. We made additions to purchase price, where appropriate, for import duties and harbor taxes which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act. We deducted from duty drawback the 0.5 percent service fee charged by the Taiwan authorities, the over-rebate of duties associated with recoverable scrap metal, and, where appropriate, the rebate of duties on polishing materials.

Foreign Market Value

In accordance with section 776 of the Act, we calculated foreign market value for each of the three respondents from the best available information.

For Lyi Mean, we used, as best information available, constructed value cost data provided by petitioner for 8 quart and 12 quart stock pots. We used petitioner's cost data because we were not successful in completing the verification of Lyi Mean's production cost data. During the verification, the Department concluded that the cost response was not verifiable due to a lack of production records, conflicting and unreliable accounting records, misrepresented documents, and inaccurate source documents.

For Song Far and Golden Lion, we used, as best information available, constructed values which were based on data from three sources: certain verified cost elements, audited financial statements, and petitioner's cost information. During the verification, the Department could not verify substantial portions of the cost responses because of conflicting data and lack of supporting documentation. However, certain elements of the cost responses were satisfactorily verified. These elements were used, together with information from audited financial statements and petitioner's information, to develop constructed values. We determine that this is the best information available for Song Far and Golden Lion.

Because we could not verify all the cost of production factors, and because petitioner's cost information was provided only for a small number of products, we could not test whether home market or third country sales had been made at less than their cost of production. However, for those products for which we had sufficient information, we did use the cost information derived from the sources identified above to develop the constructed value used in our fair value comparisons. For general expenses, we used information from the companies' audited financial statements. For profit, we used eight percent as required by the statute.

Currency Conversion

In calculating foreign market value, we made currency conversions from New Taiwan dollars to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We verified all respondent information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, which included examination of relevant sales and financial records of each company. We were unable to verify the cost response submitted by Lyi Mean and unable to verify substantial portions of the cost responses submitted by Song Far and Golden Lion.

Critical Circumstances

Petitioner alleged that imports of the subject merchandise from Taiwan present "critical circumstances." Under section 735(c)(3) of the Act, critical circumstances exist if we determine that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

Petitioner did not allege "a history of dumping" but relied solely on the alternative test of "importers' knowledge." Therefore, we must determine whether the person by whom, or for whose account, the merchandise was imported "knew or should have known" that the exporter was selling the merchandise at less than its fair value in accordance with section 733(e)(1)(A) of the Act. It is the Department's position that this test is met where margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer knew or should have known that prices for sales to the United States (as adjusted according to the antidumping law) were significantly below fair value. In this case, the margins calculated are sufficiently large for Song Far and Lyi Mean that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Therefore, we determine that this test is met.

Pursuant to section 735(c)(3), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

Based on our analysis of recent import statistics, we find that imports have been massive over a short period of time, and, therefore, for the reasons described above, we determine that critical circumstances exist with respect to imports of certain stainless steel cooking ware from Taiwan by Song Far and Lyi Mean. We have notified the ITC of this determination.

Petitioner's Comments

Comment 1. Petitioner contends that home market and third country sales have been at less than the cost of production over an extended period of time, in substantial quantities, and at prices which do not permit the recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, such sales must be disregarded when calculating the foreign market value.

DOC Response. As explained above, because of the deficiencies in the verification of the cost responses, we did not test whether home market or third country sales were made at prices below their cost of production. Instead, we used constructed value, based on best information available, for calculating foreign market value.

Comment 2. Petitioner argues that the seven "such or similar" product groupings established by the Department should be narrowed in determining whether each category of such or similar merchandise has satisfied the home market and third country viability tests.

DOC Response. Since we did not make price to price comparisons, we did not have to consider the composition of such or similar merchandise categories.

Comment 3. Petitioner argues that respondents' claims for duty drawback adjustments should be rejected because the Department was unable to verify the respondents' raw material usage. Therefore, it is impossible to determine whether there were sufficient imports of the raw materials upon which duties and taxes were paid to account for the drawback adjustment claimed.

DOC Response. At verification, we found that each of the three respondents had imported large quantities of stainless steel sheet and strip, had paid import duties, and had received duty drawback on these imports. We also found that stainless steel sheet and strip is the primary material input in manufacturing the product under investigation.

Comment 4. Petitioner argues that respondents' claims for duty drawback adjustments should be rejected because respondents failed to differentiate among the various types of steel used for cookware production. Since respondents claimed drawback adjustment on a per weight or a per unit basis, irrespective of the composition of the product at issue, and irrespective of the wide range of costs (and dutiable values) among the various types of stainless steel, an adjustment would likely result in the over-rebate of import duties and harbor taxes on stainless steel with respect to some products.

DOC Response. At verification, we found that all grades and qualities of stainless steel sheet and strip are subject to the same import duty and harbor tax rates in Taiwan. Likewise, the duty drawback rate on export merchandise, which is based on the import duty and harbor tax rates, applies to all grades and qualities of stainless steel.

Comment 5. Petitioner argues that any duty drawback adjustment granted by the Department should be limited to the rebate of duties and taxes on imported raw materials which are physically incorporated into the exported merchandise; no drawback adjustment should be granted for raw materials wasted in the production of the exported article.

DOC Response. Section 772(d)(1)(B) of the Act directs the administering authority to add to United States price any import duties which have been rebated upon exportation. No distinction is made between import duties on materials that are physically incorporated into the finished product and import duties on non-physically incorporated materials, including waste.

We note that the countervailing duty law does make such a distinction: Excessive import duty remissions, including unreasonable or excessive allowances for waste, are countervailable export subsidies. If, in a countervailing duty investigation, we were to find an excessive remission of import duties, we would adjust United States price in our antidumping duty case, in accordance with section 772(d)(1)(D) since this excessive remission would constitute an export subsidy. In that situation, it would be appropriate to limit the amount of drawback added to United States prices under section 772(d)(1)(B) to the non-

excessive portion of the import duty rebate. To do otherwise *i.e.*, to add the full amount of the drawback and to make an addition under section 772(d)(1)(D) would result in double-counting.

In the parallel countervailing duty investigation of certain stainless steel cooking ware from Taiwan, we found that there was an excessive remission of import duties because duties on non-physically incorporated polishing agents and recoverable scrap were rebated. (See "Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan," published concurrently with this notice.

As a result of these countervailable export subsidies, we are adjusting the dumping margins consistent with section 772(d)(1)(D). To avoid the double-counting problem mentioned above, we have limited the duty drawback adjustment to United States price to that portion that is non-excessive.

Comment 6. Petitioner argues that with respect to Golden Lion and Lyi Mean, for which FMV will be based in whole or in part on third country sales, the Department should add to third country price the total amount of drawback set forth in respondents' questionnaire responses, to prevent granting the companies credit for an over-rebate of duties, while disallowing the claimed adjustment for drawback to United States price.

DOC Response. Because we based foreign market value on constructed value for all respondents, this issue is moot.

Comment 7. Petitioner argues that respondents' questionnaire responses should be disregarded in favor of best information, due to untimely submissions; the revision of information shortly before and throughout the verification; the existence of internal and external, audited books; and attempts to mislead the Department with respect to source documentation.

DOC Response. Pursuant to section 776(b) of the Act, we used the best information available as described in the "Foreign Market Value" section of this notice, because verification revealed major portions of the responses to be incorrect or unsubstantiated. The best information available for purposes of this final determination is information submitted in the responses and verified pursuant to section 776(a) of the Act, and, in the absence of verified data, information submitted in the petition.

Comment 8. Citing *Porcelain-On-Steel Cooking Ware from Taiwan* (51 FR 36425, October 10, 1986), petitioner contends that the Department should include all material and labor costs associated with consumer packaging in "cost of materials and fabrication" for purposes of constructed value calculations in the final determination.

DOC Response. The Department agrees. Since the consumer packaging is considered part of the product sold to the consumer, all costs were included in the cost of manufacturing.

Comment 9. Petitioner contends that Lyi Mean's questionnaire response should be rejected in its entirety and FMV should be based on best information due to the pervasive bad faith evidenced by Lyi Mean during verification; the fact that Lyi Mean had no home market sales during the period of investigation; the fact that a successful completion of the cost investigation depended upon Lyi Mean's submission of reliable and verifiable cost of production information, which was not forthcoming; and the existence of one set of books for internal record keeping and a second, audited set for tax purposes.

DOC Response. See "Foreign Market Value" section and the Department's response to petitioner's Comment 7 above.

Comment 10. Petitioner contends that since the duty drawback claimed by Lyi Mean could not be verified, this adjustment to United States price must be denied.

DOC Response. We disagree. We were able to verify the duty drawback data in the company's response using appropriate source documents.

Comment 11. Petitioner argues that because Lyi Mean's sales prices to the trading companies include Lyi Mean's advertising expenses to the final consumer, United States price should be reduced by such advertising expenses.

DOC Response. Since we constructed a value for foreign market value using best information available, we did not have to make any circumstances of sale adjustments.

Comment 12. Petitioner contends that, contrary to respondent's arguments, the Department properly initiated a cost of production investigation against Lyi Mean.

DOC Response. We agree. Please see the Department's response to respondents' Comment 33 below.

Comment 13. Petitioner contends that as a result of Golden Lion's refusal to cooperate during verification, the Department's verification of the company's cost of production response was unsuccessful, and that Golden Lion's cost response must be rejected in its entirety.

DOC Response. See the "Foreign Market Value" section of this notice and the Department's response to petitioner's Comment 7 above.

Comment 14. Petitioner argues that because the Department was unable to verify the new packing data submitted at the end of the verification, the Department should use, as best information available, the highest U.S. packing costs submitted by Golden Lion.

DOC Response. We disagree. We verified respondent's export packing material expenses, consumer packing material expenses, and packing labor costs. Therefore, for purposes of this determination, we are using Golden Lion's verified information on U.S. packing costs.

Comment 15. Petitioner argues that because the Department's verification of Golden Lion's adjustments for differences in merchandise was unsuccessful, the Department should deny any adjustments submitted by Golden Lion which would reduce foreign market value, but should grant all submitted adjustments for differences in merchandise which increase foreign market value.

DOC Response. Since we based foreign market value on constructed value, this issue is moot.

Comment 16. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that miscellaneous adjustments should be made to the cost response to correct numerous expense and cost omissions and misallocations.

DOC Response. For Golden Lion, we used only certain elements from the cost responses in constructing foreign market value. We consider that the elements we used were verified. For those elements that were not satisfactorily verified, we used petitioner's information and certain information from audited financial statements.

Comment 17. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that production time should be based on best information available.

DOC Response. In calculating constructed value for Golden Lion, we used petitioner's labor cost data as best information available for direct labor expenses.

Comment 18. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that the company's general and administrative expenses should be allocated over the cost of goods sold.

DOC Response. The Department agrees and has allocated the general and administrative expenses and net interest expense over the costs of goods sold from the audited financial

statements, as best information available.

Comment 19. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that "miscellaneous expenses," bad debt expenses, interest expenses, foreign exchange losses and "other foreign exchange losses and other losses," and expenses for "other materials" should be included in G&A.

DOC Response. The Department has included all general and administrative expenses, including net interest expense as reflected on the audited financial statements, as best information available.

Comment 20. If Golden Lion's cost response is not rejected in its entirety, petitioner argues that the Department should use the audited figures for material usage, not the lower material figures compiled by Golden Lion's employees.

DOC Response. The Department did not consider the material usage to be verified and, therefore, used petitioner's data as best information.

Comment 21. Petitioner contends that as a result of Song Far's untimely and revised questionnaire responses, various requests that the Department reconstruct its response, and two sets of irreconcilable books, a substantial portion of Song Far's cost response could not be verified. Therefore, the Department should reject Song Far's response in its entirety in favor of best information available.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 22. Petitioner argues that because Song Far's cost submission could not be verified, the Department should either deem all of Song Far's home market sales at below the cost of production, or utilize petitioner's methodology for cost of production and constructed value as best information.

DOC Response. For Song Far, we determined that certain elements from the cost responses were verified. Therefore, we used those elements in addition to petitioner's information and audited financial statements in constructing foreign market value. We consider that the elements we used were verified.

Comment 23. Petitioner argues that because a substantial portion of Song Far's U.S. sales are made through Taiwanese trading companies and because Song Far's advertising is aimed at customers of these trading companies, Song Far's price to the trading companies includes advertising expenses. Therefore, an appropriate portion of advertising expenses should be deducted from United States price as a circumstance of sale adjustment.

DOC Response. Since we used constructed value as best information available for foreign market value, we did not have to make any circumstances of sale adjustments.

Comment 24. Petitioner contends that all finance charges and any other expenses incurred by Song Far in receiving payment for U.S. sales should be included in U.S. credit costs for purposes of any circumstance of sale adjustment for credit expenses.

DOC Response. See the Department's response to petitioner's Comment 23 above.

Comment 25. Petitioner argues that any payments made from the "private account" of Song Far's chairman should be considered payments made and expenses incurred by Song Far, since it is likely that the chairman was reimbursed one way or another for such expenses.

DOC Response. We assume that any such payments and expenses are subsumed in the general expenses that were taken directly from Song Far's audited financial statements.

Comment 26. Petitioner contends that any expenses incurred as a prerequisite to becoming a bonded manufacturer as well as any drawback which pertains to products not under investigation or not sold during the period of investigation should be deducted from any drawback adjustment.

DOC Response. Duty drawback in Taiwan is made on a shipment by shipment basis. Therefore, the drawback claimed would pertain only to sales of the subject merchandise during the period of investigation. At verification, we found no evidence of expenses incurred as a prerequisite to becoming a bonded factory.

Comment 27. Petitioner argues that because Song Far did not receive drawback on imports of plastic used in cooking ware handles, as claimed on the company's computer tapes, the amount of drawback claimed should be reduced in an amount equal to the duties and taxes paid on imported plastic.

DOC Response. At verification, Song Far revised its duty drawback to eliminate any drawback on plastic materials used in cooking ware handles. We did not allow any duty drawbacks on plastic materials in this final determination since there were no such drawbacks.

Comment 28. Petitioner argues that drawback received by Song Far on processing chemicals used as stainless steel cookware surface polishers should be denied, because such processing chemicals are not physically incorporated into the exported merchandise.

DOC Response. We agree, and have not added back duty drawback received for non-physically incorporated surface polishers for reasons stated in the Department's reponse to petitioner's Comment 5.

Comment 29. Petitioner contends that because Song Far could not explain why shipments of the same product were granted different amounts of drawback per unit, the Department should use the lowest drawback figure.

DOC Response. We agree. For Song Far, we used the lowest duty drawback rates applicable to each product.

Comment 30. Petitioner argues that since the home market credit expenses set forth on the computer printout were inconsistent, and since it does not appear that the Department verified the revised credit expense worksheet submitted on the next to the last day of verification, the Department should reject all claimed credit expenses on Song Far's home market sales.

DOC Response. Since we did not make price to price comparisons, we did not have to use Song Far's home market credit expenses. The revised home market credit worksheet, however, was verified.

Comment 31. Petitioner argues that due to Song Far's failure to provide complete and accurate information prior to the start of verification, the Department was unable to verify any differences in merchandise. Therefore, Song Far is not entitled to any favorable difference in merchandise adjustments.

DOC Response. Since we did not make price-to-price comparisons, this issue is moot.

Comment 32. Petitioner argues that because Song Far calculated its scrap offset without differentiating among the various types of metals used in its production process, it is likely that Song Far's claimed scrap offset is overstated and should be disallowed.

DOC Response. We did not allow any scrap offset in calculating the constructed value for Song Far because we did not verify the scrap value used in Song Far's production costs.

Comment 33. Petitioner argues that if Song Far's cost response is not rejected in its entirety, all interest expenses and any export expenses which cannot be separated by product should be included in general expenses.

DOC Response. The Department used the general, selling, and administrative, expenses and net interest expenses as reflected on Song Far's audited financial statements.

Comment 34. Petitioner argues that if Song Far's cost response is not rejected in its entirety, for purposes of

constructed value calculations, raw material costs must include all import duties and harbor taxes not collected by reason of export of the finished merchandise containing the imported raw materials.

DOC Response. The Department used the petitioner's data for the costs of the materials, since the Department did not consider these data to be verified.

Comment 35. Petitioner argues that if Song Far's cost response is not rejected in its entirety, non-operating income, such as "income from processing for outside factories," should not offset interest and exchange loss expenses.

DOC Response. The Department does not offset expenses with non-operating income unless such income is directly related to the production of the product. Although we did use interest income to offset interest expense, no other types of non-operating income were deducted from expenses in this case.

Comment 36. Petitioner argues that if Song Far's cost response is not rejected in its entirety, factory overhead expenses should be allocated over production quantities or sales.

DOC Response. The Department did not consider the amount of factory overhead in the response to be verified. The Department therefore used for the factory overhead, a percentage of factory overhead to labor, as reflected on the audited financial statements of the respondent.

Comment 37. Petitioner argues that if Song Far's cost response is not rejected in its entirety, G & A expenses should be allocated over the cost of goods sold.

DOC Response. We agree and have made the appropriate calculation.

Comment 38. Petitioner argues that if Song Far's cost response is not rejected in its entirety, labor costs should include all meal allowances and employee welfare contributions recorded on Song Far's books.

DOC Response. Since the Department did not consider the labor rate to be verified, it used the petitioner's data as best information available.

Comment 39. Petitioner argues that if Song Far's cost response is not rejected in its entirety, the Department should refuse to make favorable revisions to the company's raw material cost data which could not be verified, and direct raw material usage should be based on best information available.

DOC Response. In calculating raw material costs, we used Song Far's product material usage rates which we verified and petitioner's metal prices, with no allowance for scrap.

Respondents' Comments

Comments on Behalf of Golden Lion

Comment 1. Respondent argues that several components of labor expense stated in the Department's verification report such as the annual bonus should not be included in Golden Lion's labor cost.

DOC Response. The Department used petitioner's labor costs, since Golden Lion's labor costs could not be verified.

Comment 2. Respondent contends that certain miscellaneous expenses, export brokerage expenses, commissions, and bad debt should be excluded from G & A, and that other expenses relating to office personnel should be included.

DOC Response. The Department used the general and administrative expenses and net interest expenses reflected on the audited financial statements, as best information.

Comment 3. Respondent argues that various amounts in the Department's verification report regarding factory overhead, such as rent expense, should be deducted from the factory overhead.

DOC Response. The Department used as best information the factory overhead expenses reflected on the audited financial statements.

Comment 4. Respondent argues that interest expense, foreign exchange, and other losses are not ordinary business expenses and should be attributable only to Golden Lion's profit/loss, not to the company's normal G&A expenses.

DOC Response. Since we were not able to verify all general expenses, the Department used as best information, the general and administrative expenses and the net interest expenses from the audited financial statements.

Comment 5. Respondent argues that the Department verified the total raw material usage figures, such as the initial weight, scrap percentage, defective percentage, and production daily record, necessary to support Golden Lion's duty drawback adjustment.

DOC Response. Although we were not able to verify fully the company's cost response, we allowed Golden Lion's duty drawback adjustment because we were able to verify the company's duty drawback data from appropriate source documents.

Comment 6. Respondent argues that the Department should disregard petitioner's allegation that duty has been over-rebated as a result of Golden Lion's failure to indicate raw material gauge and other specifications. Although different metal types do affect the costs of raw materials, duty (and the rebate, thereof) is paid only on the basis of weight; therefore, the gauge of imported raw materials is immaterial.

DOC Response. See the DOC response to petitioner s Comment 4.

Comment 7. Respondent argues that the 48 percent allowance for scrap is the ratio of wasted raw material to finished goods; the ratio of wasted raw material to all imported raw material is 32.5 percent. Therefore, petitioner's contention that the duty drawback portion of Golden Lion's U.S. prices should be reduced by 48 percent is incorrect.

DOC Response. We adjusted Golden Lion s duty drawback to reflect the 0.5 percent service fee charged by the Taiwan authorities on the amount of duty drawback rebated and to reflect the over-rebate of material physically incorporated in the export merchandise, as noted in the Department's response to petitioner's Comment 5.

Comment 8. Respondent argues that if the consumer packaging cost is included in the cost of production, only the cost of color boxes, plastic bags, tapes, and a portion of the packing labor should be included. The cost of cartons and strings should be excluded from the cost of production.

DOC Response. In our constructed value calculations, we used all of the above packaging costs, except for cartons, in the consumer packaging component of the cost of production. Cartons were included as export packing expenses.

Comment 9. Respondent argues that the petitioner's suggested methodology for cost of production and constructed value should be disregarded because Golden Lion responded in good faith to the Department's cost questionnaire; the company did not intend to mislead the Department; Golden Lion submitted additional information during verification to facilitate the Department's verification, not to reconstruct the response; and because these supplemental verification documents are listed in the verification report and, thus, constitute best information available.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 10. Respondent argues that U.S. packing cost should be treated as verified and, therefore, should be accepted according to Golden Lion's submissions for packing costs for each U.S. product, rather than at the highest U.S. packing costs as petitioner suggests.

DOC Response. The Department used the respondent's export packing material expenses, consumer packing material expenses, and packing labor costs in our fair value comparisons.

Comment 11. Respondent contends that Golden Lion's product time study,

which was reviewed by the Department during verification, should be used as the basis for labor cost allocation.

DOC Response. Since the labor expenses submitted by the respondent did not include the sub-contract expenses, the Department used petitioner's data as best information.

Comment 12. Respondent argues that for per unit usage of products, the Department should adopt the revised usage schedule provided by Golden Lion, instead of the usage schedule sent to the Taiwanese tax authority.

DOC Response. We used petitioner's raw material cost data in calculating constructed value, because we were unable to verify fully Golden Lion's material usage rates.

Comment 13. Respondent argues that the cost of Canadian products is higher than that of U.S. products because the thinner metal used for Canadian products is more expensive than the thicker metal used for U.S. products. Therefore, the differences in merchandise should be granted so as to be consistent with the different metals.

DOC Response. Since we used constructed value, this issue is moot

Comment 14. Respondent argues that Golden Lion's leased equipment should be capitalized, and the rental payments should be treated as installment payments of principal and interest on the purchase of equipment.

DOC Response. Since we could not verify the specific information referred to in Respondent's comment, we have used, as best information available, the factory overhead reflected in the audited financial statements.

Comments on Behalf of Song Far

Comment 15. Respondent argues that several items of expense, such as meal allowances, the employee welfare fund, the retirement pension plan, and other miscellaneous expenses, should not be allocated as factory overhead to the stainless steel cookware products under investigation.

DOC Response. Since we could not verify the specific information referred to in Respondent's comment, we have used, as best information available, the factory overhead reflected in the audited financial statements.

Comment 16. Respondent argues that several items of GS & A, such as various charitable donations, meal allowance, the employee welfare fund, commission, export expense, bad debt loss, and other miscellaneous expenses, should not be allocated to the stainless steel cookware products under investigation.

DOC Response. The Department used general and administrative expenses and net interest expense reflected on the audited financial statements, as the best information available for general expenses.

Comment 17. Respondent argues that home market sales 1 and 4 were made through a broker and that the broker's commission should be deducted from home market prices.

DOC Response. Since we did not make any price-to-price comparisons, we did not have to consider this issue.

Comment 18. Respondent argues that Song Far has properly substantiated its claim for drawback adjustments.

DOC Response. We verified Song Far's duty drawback data from appropriate source documents, but were unable to reconcile the differences between actual and theoretical drawback. Therefore, as best information available, we have used the lowest theoretical duty drawback rate applicable to each product.

Comment 19. Respondent argues that drawback adjustments to United States price for raw materials wasted in the production process should be allowed because the scrap and loss in stainless steel sheet/strip during production is an inevitable and necessary result of the cookware manufacturing process, and because, in reality, Song Far has been under-rebated due to the Taiwan authorities' stringent approach to approving the scrap and loss rates in stainless steel cookware production.

DOC Response. See our response to petitioner's Comment 5.

Comment 20. Respondent argues that packing material and labor for shipment packing should be separated out and not counted for Song Far's cost of manufacture for consumer packing.

DOC Response. The Department used the respondent's costs for color boxes (both material and labor) as consumer packing and respondent's costs for cartons as export packing.

Comment 21. Respondent contends that because Song Far has submitted timely questionnaire responses, any revisions made by Song Far before and during the verification were only corrections of minor errors, the verification was done based on audited financial statements, Song Far did not request that the Department reconstruct its response during verification, and because all calculations were based on source documents, the Department should use the information provided by Song Far, not best information available, in making its final determination.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 22. Respondent argues that there should be no adjustment to United States price with regard to advertising, because Song Far's product brochures are used for both export and home market sales.

DOC Response. Since we did not make price-to-price comparisons, we did not need to make any adjustments for advertising.

Comment 23. Respondent argues that Song Far incurred no expenses as a prerequisite to becoming a bonded manufacturer; thus, nothing should be deducted from the drawback.

DOC Response. We agree.

Comment 24. Respondent argues that, as verified by the Department, no duty drawback pertaining to non-stainless steel cooking ware has been claimed by Song Far.

DOC Response. Although Song Far received duty drawback on other products, we verified that no duty drawback pertaining to non-stainless steel cooking ware was claimed or included in the allowable duty drawback on the products under investigation.

Comment 25. Respondent argues that the processing chemicals are indispensable for producing stainless steel cooking ware; therefore, the duty drawback received by Song Far for processing chemicals should not be denied.

DOC Response. While the processing chemicals may be necessary for producing the cooking ware, we have found, in the companion countervailing duty case on certain stainless steel cooking ware from Taiwan, published concurrently with this notice, that the remission of duties on these inputs constitutes a countervailable export subsidy because they are physically incorporated into the exported product. As explained in the Department's response to petitioner's Comments 5 and 28, we have adjusted the dumping margin to reflect this export subsidy, and we have not included duty drawback on these products in our adjustment to United States price for duty drawback.

Comment 26. Respondent argues that the Department should use the actual duty drawback received, or at least use the theoretical duty drawback, not the lowest duty drawback figure on sales of the same items.

DOC Response. We are using the lowest theoretical duty drawback rate applicable to each sale, because at verification we could not reconcile the difference between actual and theoretical duty drawback data.

Comment 27. Respondent argues that Song Far's difference in merchandise adjustments were verified and should be used by the Department.

DOC Response. We disagree. We were not able to verify fully Song Far's adjustments for differences in merchandise.

Comment 28. Respondent argues that Song Far's claimed scrap offset should be allowed because it is calculated based on the Bonded Factory Schedules of Materials Used, which were approved by Taiwan Customs authorities and verified by the Department.

DOC Response. We did not allow a scrap offset for raw materials when calculating constructed value.

Comment 29. Respondent argues that Song Far's United States prices should be adjusted by adding import duties and harbor taxes which would have been paid if the goods would have been sold in Taiwan.

DOC Response. We did adjust United States price for duty drawback, where the duty drawback was non-excessive. See the Department's response to petitioner's Comment 5 above.

Comment 30. Respondent argues that Song Far's factory overhead expenses should be allocated over direct labor hours to reflect reasonably the share of stainless steel cooking ware in the factory overhead.

DOC Response. The Department used the amounts reflected on the audited financial statements to determine the amount of factory overhead.

Comment 31. Respondent argues that only an allocation of G&A based on sales can reasonably reflect the share of stainless steel cooking ware in G&A.

DOC Response. The Department generally allocates the G&A based on costs of sales, not sales revenue.

Comment 32. Respondent argues that the Department should use Song Far's raw material cost data, which the Department checked during verification, without finding any discrepancies.

DOC Response. The Department used the company's usage rates and the petitioner's data for the cost of materials, with no allowance for scrap.

Comments on behalf of Lyi Mean

Comment 33. Respondent argues that the ITA unlawfully commenced a cost-of-production (COP) investigation against Lyi Mean; that the COP data, the COP submissions, and the COP verifications are, therefore, void; and that the final determination should be predicated upon Lyi Mean's sales, as reported to the Department of Commerce and verified.

DOC Response. We disagree. In the June 23 cost allegation on Lyi Mean, petitioner cites information from Lyi Mean's responses of June 16 and 17 showing that Lyi Mean had no home market sales of the products under investigation. Therefore, petitioner presented cost of production data as evidence that Lyi Mean's third country sales were made at prices below this cost of production. We determined that the information provided by petitioner constituted a reasonable basis for our initiation of a cost of production investigation.

Comment 34. Respondent argues that if the Department decides to base fair value on cost of production, it should correct petitioner's alleged cost figures, especially those concerning factory overhead, before applying them to Lyi Mean as best information available.

DOC Response. See the "Foreign Market Value" section of this notice.

Comment 35. Respondent argues that Lyi Mean acted in good faith, submitted an exemplary sales response, and did not attempt to impede the Department's verification in any way. Due to the company's small size and unsophisticated accounting system, some records were irreconcilable and others were simply not maintained, but the company should not, as a result, be punished with margins based on best information available.

DOC Response. Section 776(a) of the Act precludes the Department from issuing a final determination based on unverified information. Since all of Lyi Mean's responses could not be verified, the Department must use the best information available as described in the "Foreign Market Value" section of this notice.

Comment 36. Respondent argues that petitioner's November 6, 1986, new cost claims should be rejected, and the original cost claim embodied in petitioner's June 23, 1986, letter should be followed, modified by the substitution of a reasonable number for overhead.

DOC Response. In calculating constructed value, we utilized the cost information contained in petitioner's June 23, 1986, submission.

Comment 37. Respondent argues that if the Department rejects Lyi Mean's cost submission as not verified, the rejection should apply to the entire response. Unverified information in the response is not usable as best information available; therefore, petitioner errs in arguing that Lyi Mean's profit figure should be derived from Lyi Mean's COP submission rather than set at the statutory eight percent minimum.

DOC Response. The Department has used the petitioner's data submitted on June 23 for all of the costs of production and constructed value components.

Suspension of Liquidation

In accordance with section 735(d)(2) of the Act, on July 7, 1986 we directed the U.S. Customs Service to suspend liquidation of all entries of certain stainless steel cooking ware from Taiwan. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption will continue to be suspended, and is ordered retroactively to April 8, 1986, for Song Far and Lyi Mean. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown in the table below. The security amount established in our preliminary determination of July 7, 1986, is no longer in effect. The suspension of liquidation will remain in effect until further notice.

With respect to Golden Lion and all others, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain stainless steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after July 7, 1986, the date of publication of our notice of preliminary determination in the **Federal Register.** The U.S. Customs Service shall continue to require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price, as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Golden Lion Metal Industry Co., Ltd	15.08
Song Far Industry Co., Ltd	25.90
Lyi Mean Industrial Co., Ltd	26.10
All other manufacturers/producers/exporter	22.61

Article VI 5. of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies (as determined in the

corresponding final affirmative countervailing duty determination on certain stainless steel cooking ware from Taiwan) will be subtracted from the dumping margins for deposit or bonding purposes on imports of certain stainless steel cooking ware, as defined in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC, however, determines that such injury does not exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on certain stainless steel cooking ware from Taiwan, equal to the amount by which the foreign market value exceeds the U.S. price.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 353.46 of our regulations (19 CFR 353.46). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 353.47 of our regulations (19 CFR 353.47). No hearing was requested.

Both petitioner and respondents submitted briefs addressing the sales issues arising from the investigation on November 6, 1986, and rebuttal briefs on November 10, 1986.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

November 19, 1986.

[FR Doc. 86-26661 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Texas et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-018. Applicant: University of Texas at Austin, RLM 11.214, Austin, TX 78712. Instrument: Diagnostic Neutral Beam. Manufacturers: Culham Laboratories, United Kingdom. Intended Use: The instrument will be used to provide change-exchange centers for the change-exchange reaction with protons and impurity ions in the hot plasma. Neutrals formed by the change-exchange reaction will then eject a proton which can be observed with spectroscopic diagnostics. This instrument will also be used for training graduate students. Application received by Commissioner of Customs: November 3, 1986.

Docket No.: 87-029. Applicant: Children's Hospital, 125 Desoto Street, Pittsburgh, PA 15213. Instrument: Electron Microscope, Model CM 10/35 with Accessories. Manufacturer: N.V. Phillips, The Netherlands. Intended Use: The instrument will be used for clinical and research studies of human tissues and organs (liver, kidney, muscle, heart, brain, skin, nasal mucosa) from pediatric patients with a variety of diseases and various types of tumors. Research will be performed on the types of tumors. Research will be performed on the tumors using immunoelectron microscopy to better define tumor lineage, information which can improve selection of treatment protocols. Application Received by Commissioner of Customs: November 4, 1986.

Docket No.: 87-030. Applicant: Our Lady of the Lake Regional Medical Center, 5000 Hennessy Boulevard, Baton Rouge, LA 70809. Instrument: Extracorporeal Shock Wave Lithotripter. Manufacturer: Dornier Medical Systems, West Germany. Intended Use: The instrument is intended to be used for studies of kidney and ureteral stones to determine if there is a relationship to the type of stone formation and the patient's environment. The instrument will also be used to train medical residents and staff urologist in the use of lithotripsy. Application Received by Commission of Customs: November 4, 1986.

Docket No: 87-031. Applicant: University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturers: Hitachi, Japan. Intended Use: The instrument is intended to be used for the following experiments on biological samples, mostly macromolecular proteins from subcellular preparations:

(1) Examination of protein microcrystals to determine the three dimensional structure.

(2) Examination of viral tail fibers at various stages of development,

(3) Determination of proteins in viral tails by visualization of specific binding sites using collodial gold and

(4) Use of metal shadowing of viral base plates to determine their structure.

These experiments will be conducted to increase the understanding of the structure and function of multi-subunit enzymes, viral tails and components of tissues. In addition, the instrument will be used for various educational purposes in the course Structural Molecular Biology. Application Received by Commissioner of Customs: November 4, 1986.

Docket No: 87-033. Applicant: University of Colorado, Department of Chemistry, Boulder, CO 80309-0215. Instrument: FTI Spectrometer, Model IZM030 with Accessories. Manufacturer: Bomen, Inc., Canada. Intended Use: The instrument will be used (a) to measure the infrared absorption spectra of

polyatomic radicals, and (b) to measure the ultraviolet absorption spectra of jet cooled organic molecules. The research will be performed by graduate students, postdoctoral associates and undergraduate students. Application Received by Commissioner of Customs: November 5, 1986.

Docket No: 87–034. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. Instrument: Laser Ionisation Mass Analyser, Model LIMA–2A. Manufacturer: Cambridge Mass Spectrometry, United Kingdom. Intended Use: The instrument will be used to investigate photon induced emission of electrons, ions and neutrals of solids (or low vapor pressure liquids suspended on the surface of solids). Two types of experiments will be conducted (a) experiments to determine the spatial variation of electron emission from insulator surfaces as a function of photon fluence and photon wavelength and (b) impurity analysis of materials using indirect emission processes. Application Received by Commissioner of Customs: November 6, 1986.

Docket No: 87–035. Applicant: California State University, Los Angeles, 5151 State University Drive, Los Angeles, CA 90032. Instrument: NMR Spectrometer, Model AM 400 with Accessories. Manufacturer: Bruker Instruments Inc., West Germany. Intended Use: The instrument is intended to be used in chemistry and biochemistry research projects. Typical experiments in the liquid and solid state will involve carborane compounds, phosphorus-containing hemoglobin effectors, ruthenium-substituted myoglobin models, anticancer antibiotics, metal-ion complexation, membrane properties, whole cell studies, crown ether complexation, polymer structure, surface chemistry and biochemical systems. The goals of these projects are the evaluation of molecular structures, molecular interactions and metabolic processes. In addition, the instrument will be used for educational purposes in various chemistry courses. Applicant received by Commissioner of Customs: November 6, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR. 86–26664 Filed 11–25–86; 8:45 am]

BILLING CODE 3510–DS–M

[C–583–604]

Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 2.14 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel cooking ware from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1785 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware. For purposes of this investigation, the following programs are found to confer subsidies:

- Export Loss Reserve
- 25 Percent Income Tax Ceiling for Big Trading Companies
- Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise
- Duty Drawback on Imported Materials Not Physically Incorporated in Export Merchandise

We determine the estimated net subsidy for certain stainless steel

cooking ware to be 2.14 percent *ad valorem.*

Case History

On January 21, 1986, we received a petition filed in proper form by the Fair Trade Committee of the Cookware Manufacturers Association on behalf of the U.S. industry which manufactures certain stainless steel cooking ware. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on February 10, 1986, we initiated the investigation (51 FR 6020, February 19, 1986). We stated that we expected to issue a preliminary determination by April 16, 1986.

Since Taiwan is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On March 4, 1986, the ITC determined that there is a reasonable indication that imports of certain stainless steel cooking ware from Taiwan materially injure, or threaten material injury to, a U.S. industry (51 FR 9541, March 19, 1986).

We presented a questionnaire concerning the petitioner's allegations to the American Institute in Taiwan in Washington, DC on February 20, 1986. We received responses to the questionnaire on March 13, 19, and 31, 1986. There are five producers of the subject merchandise in Taiwan which accounted for a majority of the exports to the United States during the review period: Golden Lion Metal Industry Co., Ltd.; Song Far Co., Ltd.; Lyi Mean Industry Co., Ltd.; Crown Manufacturing Co., Ltd.; and First Stainless Steel Industry Co., Ltd. In addition, we selected seven trading companies, which accounted for a majority of the subject merchandise exported by these five producers to the United States during our review period, to respond to our questionnaire: Transmark International Corp.; Fairview International Corp.; Collins Co., Ltd.; Jack-Tom Industrial Co., Ltd.; D & J Industrial Co., Ltd.; Atico Corp.; and Pan-Orient Industrial Corporation.

On the basis of information contained in the responses, we made a preliminary negative countervailing duty determination on April 16, 1986 (51 FR 15520, April 24, 1986). On April 30, 1986, we extended the deadline date for the final determination in this investigation to September 15, 1986, to correspond to the dates of the final determinations in the antidumping duty investigations of the same products from Taiwan and Korea (51 FR 16882, May 7, 1986). This was done at the request of petitioner pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (PL 98–573). From May 19 to May 30, and September 1 to September 26, 1986, we conducted verification in Taiwan.

On August 1, 1986, the deadline dates for the final determination of the antidumping duty investigations of certain stainless steel cooking ware from Korea and Taiwan were postponed to no later than November 19, 1986. Accordingly, the final determination for the countervailing duty investigation of certain stainless steel cooking ware from Taiwan was also postponed to coincide with the antidumping duty determinations of the same products from Korea and Taiwan (51 FR 28610, August 8, 1986).

Petitioner submitted a request for a hearing, which was subsequently withdrawn with the consent of respondents. Both petitioner and respondents filed briefs discussing the issues arising in this investigation which have been taken into consideration in this determination.

Scope of Investigation

The products covered by this investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper, or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (TSUS). The products covered by this investigation are skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of investigation are stainless steel oven ware and stinless steel kitchen ware, which are also included under the 653.94 TSUS classification.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the

"Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments filed by petitioner and respondents, we determine the following:

I. PROGRAMS DETERMINED TO CONFER SUBSIDIES

We determine that subsidies are being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware under the following programs:

A. Export Loss Reserve

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively for compensating export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then balance the account and carry the reserve funds forward as taxable income for the next year. Song Far Industry Co., Ltd., a producer of certain stainless steel cooking ware, reported that it used this program during the review period.

Because the export loss reserve is contingent on export sales, we determine that it confers a benefit which constitutes an export subsidy. To calculate the benefits, we treated the tax savings from the export loss reserve as a one-year, interest-free loan. We compared the interest-free rate with the maximum short-term lending rate set by the Central Bank of China, multiplied the difference by the amount of the tax savings, and then allocated the benefit over the total 1985 export sales of all products by the five manufacturers who responded to our questionnaire. The estimated net subsidy is 0.001 percent *ad valorem*.

B. 25 Percent Income Tax Ceiling for Big Trading Companies

Article 15 of the SEI permits productive enterprises and big trading companies to pay no more than 25 percent corporate income tax on income exceeding NT$500,000, rather than the 35 percent required by Taiwan's graduated corporate income tax law.

In the "Final Negative Countervailing Duty Determination: Porcelain-on-Steel Cooking Ware from Taiwan" (51 FR 36453, October 10, 1986), we determined that this program was available to only a select number of trading companies based on export performance. In examining the criteria used to determine "big-trading company" status, we learned that to be eligible a trading company had to comply with all of the following: (1) Have a predetermined annual income from exports; (2) maintain outstanding capital in excess of NT$200 million; (3) operate only an export-import business; and (4) maintain overseas subsidiaries in more than three countries. Since the preferential tax treatment extended to big trading companies is based on export performance we determined that this program conferred an export subsidy.

Collins Co., Ltd., a respondent in this investigation, was designated as a big trading company in 1984 and 1985. At verification, we found that Collins Co., Ltd. had calculated its 1984 tax, which was payable during the review period, payable at the 25 percent rate. To calculate the subsidy, we computed Collins' tax savings resulting from the difference in the 25 and 35 percent rates. We allocated a portion of the tax savings to the manufacturers who exported the products under investigation to the United States through Collins. We then divided the benefits allocated to these manufacturers by their 1985 exports of the subject merchandise to the United States. The estimated net subsidy is 0.010 percent *ad valorem*.

C. Overrebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise

Based on an allegation raised by the petitioner after our preliminary negative countervailing duty determination in this investigation, we examined the duty drawback system in Taiwan regarding exports of stainless steel cooking ware.

Duty drawback in Taiwan is given on certain imported materials used to produce certain export products. Duty drawback is refunded on a shipment-by-shipment basis and is calculated by applying a pre-established duty drawback rate to the net weight of the finished product in each export shipment. The duty drawback rate is approved by the Taiwan authorities for each export product based on raw material usage and production yield data submitted by manufacturers of the export product.

For the stainless steel cooking ware under investigation, the Taiwan authorities established an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the loss or wastage for the raw material. For stainless steel sheet or coil used in the production of cooking ware, the input ratio imputed in Taiwan duty drawback rate is 1.48. For example, to claim duty drawback on an exported pot weighing 1 kilogram, 1.48 kilograms of stainless steel is assumed to be physically-incorporated in the exported pot. These allowable loss rates include material which may later be sold as scrap.

We have determined that a duty drawback program which includes some amount for loss or wastage in the calculation of the amount to be remitted on raw materials used in the manufacture of exported goods is not necessarily countervailable. The rates only become countervailable when they are unreasonable or excessive. We consider duty drawback received on recoverable scrap to constitute an unreasonable or excessive rebate of customs duties. Therefore, when loss or wastage rates include an amount for recoverable scrap, we would find that the rates are excessive and, thus, countervailable.

During the verification, we reviewed summary worksheets used by the Taiwan authorities to calculate the loss rate. However, because the loss rates calculated by the Taiwan authorities were not based directly on stainless steel cooking ware, but rather on other stainless steel kitchenware that are grouped and classified by the Taiwan authorities in the same duty drawback category as is cookware we considered it necessary to examine the companies' information concerning loss rates.

In this case, we compared the loss rate approved by the Taiwan authorities to the loss rate of Song Far, excluding from our comparison the loss attributable to recoverable scrap. Making this comparison, we find that the Taiwan authorities' established loss rate is excessive. As such, we find that in this case, a portion of the duty drawback is countervailable. To calculate the benefit from the excessive drawback, we multiplied the percentage of the excessive duty drawback by the total amount of duty drawback for Golden Lion, Song Far, and Lyi Mean (the only companies for which we had information concerning duty drawback). Dividing by total exports of those producers, we calculated an estimated net subsidy of 2.128 percent *ad valorem*.

D. Rebate of Import Duties and Indirect Taxes on Imported Materials Not Physically Incorporated in Export Merchandise

At verification, we found that Song Far had received duty drawback on two types of liquid polish used to polish stainless steel metal in the subject merchandise. Since it was not demonstrated at verification that such liquid metal polishes are physically incorporated in the exported product, we determine that the duty drawback of import duties and indirect harbor taxes on imported liquid polish constitutes a countervailable benefit to manufacturers and producers of standless steel cooking ware.

Duty drawback on these two types of liquid metal polish was received by Song Far only on export shipments of the subject merchandise made on or after November 26, 1985. For those export shipments made after this date and during the review period, we computed the amount of duty drawback attributable to the liquid metal polish and divided this amount by total 1985 exports of Song Far, Golden Lion, and Lyi Mean to arrive at a net subsidy of 0.002 percent *ad valorem.*

II. PROGRAM DETERMINED NOT TO CONFER SUBSIDIES

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware under the following program:

A. Development Loans under Article 84 of the SEI for the Purchase of Local Taiwan-made Machinery

At verification, we found that Golden Lion had received development loans under Article 84 of the SEI for the Medium Business Bank of Taiwan (MBBT) for the purchase of local Taiwan-made machinery.

Under Article 84 of the SEI, the Executive Yuan Development Fund provides funds from the Taiwan budget for certain development purposes to different agencies, one of which is the MBBT. The MBBT is owned by the Taiwan authorities and is operated as a profit making bank. The bank is required to provide at least 70 percent of its lending to small- and medium-size businesses in Taiwan. MBBT makes three types of development loans under Article 84 of the SEI: (1) Purchase of local Taiwan-made machinery, (2) purchase of automated machinery, and (3) manufacture of strategic products. Approximately 25 percent of the funds for these development loans are provided by the Executive Yuan Development Fund.

MBBT authorities stated that any productive enterprise as defined under Article 3 of the SEI, is eligible to apply for a development loan to purchase local Taiwan-made machinery. We examined MBBT loan records and found that a variety of industry sectors had received development loans to purchase local Taiwan-made machinery, including electric fans, plastic injection molds, rubber foam sponge, automobile parts, sewing machines, wood furniture, unfinished textiles, cardboard, cotton weaving, lanolin for cosmetics, floor tiles, surgical bandages, plastic pipe, glass molding machines, steel castings, plumbing equipment, general hardware equipment, vacuum cleaner parts, and printed circuit boards.

We have determined in previous final countervailing duty determinations that the term "productive enterprises" as defined in Article 3 of the SEI, does not limit application to a specific enterprise or industry or a group of enterprises or industries. Furthermore, the MBBT loan records show that development loans for the purchase of local Taiwan-made machinery are not provided to a specific enterprise or industry, or group of enterprises or industries. Therefore, we determine that development loans under Article 84 of the SEI for the purchase of local Taiwan-made machinery are not countervailable.

III. PROGRAMS DETERMINED NOT TO BE USED

We determine that manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware did not use the following programs.

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters to apply for low-cost export loans upon presentation of a letter of credit. Authorized commercial banks provide export loans at normal commercial rates, then apply for interest rate reductions from the Central Bank. If the Central Bank approves the reduction, commercial banks correspondingly reduce the lending rate to the exporters. With the exception of Trans World Prosperity, none of the companies under investigation obtained export financing under this program during the review period.

Trans World Prosperity is a trading company related to Transmark International Company, a respondent in this investigation. At verification, we found that Trans World Prosperity had used export loans during the review period which had interest rates at the export loan interest rate approved by the Central Bank of China. We verified that none of these export loans were used to finance exports of the products under investigation to the United States during the review period.

B. Duty Exemptions and Deferrals on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties and dues on selected capital equipment in a series of installments beginning one year from the date of importation. In addition, qualified enterprises are exempt from import duties on selected machinery and equipment used for the establishment or expansion of an approved project or for research and development. None of the companies under investigation used duty exemptions or deferrals on imported equipment during the review period.

C. 22 Percent Income Tax Ceiling

Article 15 of the SEI permits capital-intensive and/or technology-intensive enterprises engaged in the basic metal production industry, heavy machinery industry, or petrochemical industry to use a marginal tax rate of 22 percent, instead of the 35 percent rate required by Taiwan's income tax law. None of the companies under investigation claimed the 22 percent income tax rate during the review period.

D. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI allows newly established "productive enterprises" either to use accelerated depreciation on fixed assets, machinery, and equipment or to select a five-year holiday on corporate income taxes. In addition, expanding firms may participate in a four-year tax holiday on increased profits from expansion or a rapid depreciation of newly purchased buildings or equipment. None of the companies under investigation applied for or received benefits under Article 6 of the SEI during the review period.

Petitioner's Comments

Comment 1: Petitioner argues that rebates of import duties and taxes levied on imported raw materials not physically incorporated in exported merchandise are countervailable.

DOC Position: We agree. (See actions I.C and I.D above.)

Comment 2: Petitioner argues that the system of deferred payment of import duties and harbor taxes applicable to producers of stainless steel cooking ware is countervailable because the system allows deferred payment of

import duties and harbor taxes until after the raw materials have been used to produce cooking ware for export. The benefit is equal to the value of an interest free loan for the amount of duties and taxes which should have been paid at the time of importation of the raw materials.

DOC Position: This allegation was brought to our attention late in the investigation. We therefore were unable to gather sufficient information at verification upon which to make a determination. This issue will be addressed in any eventual administrative review under section 751 of the Act, if requested.

Comment 3: Petitioner maintains that the long-term development loans received by Golden Lion for purchase of local Taiwan-made machinery are preferential in nature of thus are countervailable.

DOC Position: We disagree. As stated in section II.A. above, we have determined that these loans are not limited to a specific enterprise or industry or group thereof, and are therefore not countervailable.

Comment 4: Petitioner argues that the preferential export financing received by Trans World Prosperity and Collins Co., Ltd., under the Export Discount Regulation of the CBC is countervailable.

DOC Position: During verification at Trans World Prosperity and Collins Co., Ltd., we examined company accounting records and export documents on each of the export loans provided under the Export Loan Discount Regulations. We found that all of the export loans received were used to finance exports of merchandise other than that under investigation.

Comment 5: Petitioner contends that the tax benefits received by Collins Co., Ltd., as a result of being designated a "big trading company" in 1984 and 1985 are countervailable.

DOC Position: We agree. (See section I.B. above.)

Comment 6: Petitioner argues that all benefits received by Song Far as a result of the export loss reserve are contervailable.

DOC Position: We calculated the tax savings achieved by Song Far based on the actual amount of the export loss reserve deduction claimed on Song Far's 1984 income tax return which was filed during the review period. See our discussion in Section I.A. above.

Comment 7: Petitioner argues that stainless steel cooking ware producers in Taiwan receive a countervailable overrebate of duty drawback because the Taiwan duty drawback system appears to grant rebates based, in part, on the weight of packing materials purchased in the home market.

DOC Position: At verification, we found that duty drawback was calculated by applying the duty drawback rate for stainless steel cooking ware to the net weight, not gross weight, listed on the export declaration. Therefore, the duty drawback rate did not include the weight of packing materials.

Respondents' Comments

Comment 1: Respondents argue that the wastage factor necessary to account for the amount of raw materials required to produce the finished export product is not countervailable.

DOC Position: We agree that loss or wastage rates used in the determination of duty drawback rates are not necessarily countervailable. However, when the wastage rates are excessive, the excess is countervailable. (See sections I.C. and I.D. above.)

Comment 2: Respondents contend that the deferral of payment on import duties and taxes does not confer a countervailable benefit on Taiwan producers of stainless steel cooking ware.

DOC Position: This issue will be addressed in any eventual administrative review under section 751 of the Act, if requested. (See DOC Position to Petitioner's *Comment 2* above.)

Comment 3: Respondents maintain that the long-term development loans received by Golden Lion under article 84 of the SEI are available to a wide selection of industries and are not targeted to any specific enterprise or industry, or group of enterprises or industries.

DOC Position: We agree. (See section II.A. above.)

Comment 4: Respondents argue that export financing received by Trans World Prosperity and Collins Co., Ltd. is not countervailable because none of the export loans under consideration were made for shipments of the merchandise under investigation.

DOC Position: We agree. (See section III.A. above.)

Comment 5: Respondents contend that the benefits received by Collins Co., Ltd. as a big trading company are not countervailable because the 25 percent income tax ceiling is available to an enormous number and variety of enterprises in Taiwan.

DOC Position: We disagree. (See section I.B. above.)

Verification

In accordance with 776(a) of the Act, we verified the data used in making our final determination. We conducted verification in Taiwan during May 19 to 30, and a follow-up verification during September 1 to 26, 1986. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the accounting and financal records of the companies producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). Petitioner, after requesting a hearing, withdraw his request with the consent of respondents. Therefore, a hearing was not held in this investigation. Written views have been received and were considered in reaching this final determination.

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Taiwan which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond equal to 2.14 percent *ad valorem* for each entry of this merchandise.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry within 75 days after the date of this determination. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or

cancelled. If, however, the ITC determines that such injury exists, we will issue a countervailing duty order, directing the Customs officers to continue suspension of liquidation and to collect cash deposits on all entries of certain steel cooking ware from Taiwan entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

November 19, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-26663 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235, or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco, De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 88510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: November 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels (Joint Venture).

Joint Venture

The Governments of Italy, Japan, Spain, German Democratic Republic (GDR), the Kingdom of the Netherlands (Netherlands) and ther Union of Soviet Socialist Republics (USSR) have submitted permit applications to engage in joint venture activities in the Northwest Atlantic Ocean Fisheries during 1987. Foreign vessels will receive transshipments of U.S. harvested fish and appropriate by-catch species. The following tables summarize their request:

SPECIES

[In metric tons]

Country	Illex	Loligo	Mackerel	Dog fish	Hake red/silver	American partner
Northwest Atlantic Ocean Fisheries						
Italy	2,000	2,000	1,000	500	500/1,000	IST Corporation, Inc., Cape May, NJ.
Japan	1,500	1,500				Lund's Fisheries, Inc., Cape May, NJ.
Spain	1,000	1,000				Stonavar Trading Inc., Bristol, RI.
GDR			7,500			The Mayflower Group, Gloucester, MA.
Netherlands			1,000			Scan Ocean, Inc., Gloucester, MA.
USSR			20,000			Marine Resources Company, Int'l., Seattle, WA.

The Governments of the People's Republic of China (China), Japan, the Republic of Korea (Korea), the Polish People's Republic (Poland), and the Union of the Soviet Socialist Republics (USSR) have submitted permit applications to engage in joint venture activities in the Alaskan fisheries during 1987. The Government of the Polish People's Republic has also submitted permit applications for the WOC fishery. Foreign vessels will receive

transshipments of U.S. harvested fish and appropriate by-catch species. The following tables summarize their requests:

SPECIES

[In metric tons]

Country	Pollock	Pacific cod	Atka mackerel	Yellowfin sole	Other flounders	Miscellaneous	American partner
Bering Sea and Aleutian Islands Fisheries							
China	23,000	2,200	1,500	2,500	2,000	0	Undetermined.
Japan	475,000	2,000	0	55,500	0	0	(1)
Korea	594,640	26,750	38,300	42,100	4,450	610	(2)
Poland	45,000	1,000	20	200	520	420	(3)
USSR	4,000	29,000	0	91,000	0	0	Marine Resources Company, Int'l. Seattle, WA.
Gulf of Alaska							
China	7,200	780	0	0	0	0	Undetermined.
Japan	50,000	0	0	0	0	0	(1)
Korea	47,370	1,200	3,900	0	930	490	(2)
Poland	5,000	300	10	0	50	120	(3)
USSR	14,000	61,000	1,000	0	0	0	Marine Resources Company, Int'l. Seattle, WA.

[1] Japanese partners in Seattle, WA: Northern Deep Sea Fisheries, Inc., Profish International, Inc.; Westward Trawlers, Inc.; Peter Pan Seafoods, Inc., Kyokuyo USA, Inc. Partners in other locations: Kodiak & Western Trawlers Group, Kodiak, AK; Alyeska Ocean, Inc., Anacortes, WA.
[2] Korean partners in Seattle, WA: Joint Venture Fisheries, Ltd.; Arctic Venture Fisheries, Inc.; Profish Alaska, Inc.; Cal-Alaska Fisheries, Inc. Partners in other locations: Alaska Joint Venture Fisheries, Anchorage, AK; Alaska Pacific fisheries, Ltd., Anchorage, AK; and Daerim America, Inc., Ft. Lee, NJ.
[3] Polish partners in Seattle, WA are Profish International, Inc. and Alaska Pacific International, Ltd.; and in Coos Bay, OR, Quest Export Trading Co.

SPECIES

[In metric tons]

Country		American Partner
Washington, Oregon and California Trawl Fisheries		
Poland	Requests 37,500 mt. Pacific whiting only.	(1)

[1] Polish partners in Seattle, WA are Profish International, Inc. and Alaska Pacific International, Ltd.; and in Coos Bay, OR, Quest Export Trading Co.

[FR Doc. 86-26698 Filed 11-21-86; 5:05 pm]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Centocor et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Centocor of Malvern, PA 19355, NeoRx Corporation of Seattle, WA 98119 and Organon of West Orange, NJ 07052 a shared exclusive right to practice the invention embodied in U.S. Patent Application No. 6-778,670, "Target Specific Cross-Linked Heteroantibodies." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-26633 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-04-M

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on December 15, 1986 at 10:00 a.m. at Hyatt Regency Hotel, 151 East Wacker Drive, Chicago, Illinois 60601. Meeting will take place in the Addams Room.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of the Minutes
III. Old Business
  A. New Directions for USTTA Worldwide
  B. Status of SIC Codes
  C. Crisis Management
IV. New Business
  A. U.S./Ecuador Bilateral Tourism Relations
  B. Current Legislative Issues
    1. Visa Waiver—Posturing for Tourism
    2. Impact of Tax Reform on Tourism
  C. National Tourism Week and Bicentennial of the Constitution
  D. Christopher Columbus Quincentenary Celebration
V. Miscellaneous
  A. Establish next meeting date
VI. Adjournment

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 86-26589 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

November 21, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 30, 1985 a directive dated December 24, 1985 was published in the **Federal Register** (50 FR 53182), which announced the import restraint limits for certain cotton, wool and man-made fiber textile products, including cotton printcloth in Category 320 pt. (only TSUS items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. CITA has determined that exports of certain napped fabrics currently charged to the 1986 limit for Category 320 pt., should not be charged to that limit.

Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs, to deduct 3,588,813 square yards from the import charges made to the current year limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule

3 of the Tariff Schedules of the I States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 21, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on November 28, 1986, you deduct 3,588,813 square yards from charges made to the restraint limit established in the directive of December 24, 1985 for cotton textile products in Catagory 320-P [1], produced or manufactured in China and exported during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

This letter will be published in the **Federal Register.**

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26655 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in the Philippines

November 20, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 20, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 20, 1985 (50 FR 52830), as amended, established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 336-T, 336-NT, 636-T, 636-NT, 645/646-NT and 646-T, produced or manufactured in the Philippines and exported during the agreement year which began January 1, 1986 and extends through December 31, 1986. During consultations held in November 1986, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement on November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, it was agreed that limits for Categories 336-NT, 636-NT and 645/646-NT, would be increased by the application of special swing.

The 1986 agreement year limits for Categories 336-T, 636-T and 646-T are being reduced to account for the increases in the other categories.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for the categories, as indicated.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

November 20, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on November 20, 1986, the directive of December 20, 1985 is hereby further amended to include the following adjusted restraint limits:[1]

Category	Adjusted 12-mo. limit [2]—dozen
336-T	397,111
336-NT	36,652
636-T	1,087,963
636-NT	60,512
645/646-NT	133,842
646-T	306,593

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26656 Filed 11-25-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 20, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids will meet at the Pentagon, Washington D.C. on December 15-16, 1986 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of penetration aids proposed for the Minuteman III.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-26601 Filed 11-25-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Committee on U.S. Oil and Gas Outlook; Meeting

Notice is hereby given that the

[1] In Category 320, only TSUS items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[1] The agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Committee on U.S. Oil and Gas Outlook will meet in December 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on U.S. Oil and Gas Outlook will be studying factors affecting the overall outlook for oil and gas in the United States. Its analysis and findings will be based on information and data to the gathered by the various task groups.

The Committee on U.S. Oil and Gas Outlook will hold its 8th meeting on December 9–10, 1986, starting at 9:00 a.m., in the 29th Floor Conference Room of Tenneco Inc., the Tenneco Building, 1010 Milam Street, Houston, Texas.

The tentative agenda for the Committee on U.S. Oil and Gas Outlook meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss study assignments.
3. Review draft report.
4. Discuss and other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Committee on U.S. Oil and Gas Outlook is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee on U.S. Oil and Gas Outlook will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 100 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 19, 1986.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 86–26614 Filed 11–25–86; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

[BPA File No. DSC–6(c)]

Hearing and Opportunity for Public Review and Comment; Proposed Implementation of a Conservation Program Designed to Modernize Aluminum Smelters in the Pacific Northwest

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for comments. All comments and documents submitted as part of the Official Record compiled in the process should contain the file number designation DSC–6(c).

SUMMARY: BPA is proposing to implement a conservation program to encourage primary aluminum smelters in the Pacific Northwest to modernize their plants (conservation/modernization program). This program has the potential to provide up to 250 megawatts of energy savings. Section 6(c) of this Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839d(c) (Northwest Power Act), requires a hearing to be held on BPA proposals to acquire a major resource or to implement a conservation measure which will conserve an amount of power equivalent to a major resource. Section 3(12) of the Northwest Power Act, 16 U.S.C. 839a(3)(12), defines a major resource as having a planned capability greater than 50 average megawatts and is acquired for a period of more than 5 years. The Administrator is also required, on the basis of the hearing, to determine whether the proposal is consistent with the Northwest Conservation and Electric Power Plan (Plan) of the Pacific Northwest Electric Power and Conservation Planning Council (Council). Notice is hereby given for a section 6(c) hearing on the proposed conservation/modernization program.

Responsible Official: Mr. John D. Carr, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for the section 6(c) hearing on the conservation/modernization program.

DATES: A description of the proposal conservation/modernization program and supporting decision document are available at this time from BPA's Public Reference Room, 1002 NE. Holladay, Portland, Oregon 97232–4189.

BPA's direct testimony will be available on January 2, 1987, from BPA's Public Reference Room.

Persons wishing to become a party to the hearing must submit a written petition to intervene. The written petition must be received by January 9,1987, and should be addressed to Hearing Officer, c/o James O. Luce, Office of General Counsel—APP, Bonneville Power Administration, 1002 NE. Holladay, Portland, Oregon 97232–4189.

A prehearing conference will be held before the hearing officer at 9:00 a.m. on January 12, 1987, at 1827 NE. 44th Avenue, Portland, Oregon 97213. Registration for the prehearing conference will begin at 8:30 a.m. At the prehearing conference, the hearing officer will establish the hearing schedule which will be mailed to all parties of record.

The hearing will commence at 9:00 a.m. on January 26, 1987, at 1827 NE. 44th Avenue, Portland, Oregon 97213.

Persons who are not parties may submit oral and written comments to the BPA Public Involvement office through February 13, 1987.

The Administrator's record of decision on the proposal will be completed by February 20, 1987. The hearing officer will establish the hearing schedule so as to enable the Administrator to meet this schedule.

The hearing will be conducted pursuant to the section 6(c) Hearings Procedures recently adopted by the Administrator and published concurrently with this notice.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. 12999, Portland, Oregon 97212. Oral comments should be submitted to the Public Involvement Office at the following telephone numbers, voice/TTY: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, BPA Public Involvement office.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6959.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–622–4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(c) of the Northwest Power Act requires the Administrator to (1) conduct a public hearing on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource and (2) to determine whether the proposed action is consistent with the Council's Plan. The Act also permits the Council to determine subsequently whether the action is consistent with the Council's Plan. If either the Administrator or the Council determines that the proposed action is inconsistent with the Plan, BPA can proceed with the action only after receiving expenditure authorization from Congress.

II. Proposed Major Resource Action

BPA is proposing to implement a conservation/modernization program which will provide financial incentives to BPA's primary aluminum smelter direct service industrial customers to modernize their plants and make them more efficient users of electricity. An incentive of 5 mills (0.5 cents) per saved kilowatthour for a 10 year period will be offered by BPA for energy saved through efficiency improvements at individual smelters. The benefits include maintaining BPA revenues from these customers, helping to stabilize the region's electric power system loads, and making available to BPA up to 250 megawatts of energy savings when they have needed.

III. Relevant Statutory Provisions

Bonneville Project Act, 16 U.S.C. 832 *et seq.;* Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.;* Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C 839 *et seq.*

IV. Procedures Governing Section 6(c) Hearings

The Section 6(c) Hearings Procedures were recently adopted by the Administrator and are published concurrently with this notice. The procedures area also available upon request from the BPA Public Involvement office.

BPA's 6(c) hearing procedures limit the scope of the hearing to a determination of whether the proposed major resource action will achieve substantially the goals and objectives of the Council's Plan in effect at the time the Administrator initiates a 6(c) proceeding. The 6(c) hearing on the conservation/modernization program will be limited to a determination of whether the program will achieve substantially the goals and objectives of the current 1986 Council Plan.

BPA's 6(c) procedures provide for publication of a notice of a hearing on the proposed major resource action, a prehearing conference, a hearing, receipt of written or oral comments, compilation of the hearing record, preparation of a record of decision, which includes the Administrator's determination regarding consistency, and the transmittal of the record of decision to the Council.

The procedures provide that the Administrator may approximate the amount of time available to the hearing officer to conduct the hearing, compile the hearing record, and permit the Administrator to prepare and complete his record of decision for transmittal to the Council. For the conservation/modernization proposal, the Administrator believes that this process can be completed in 26 days. Therefore, pursuant to section 4 of the 6(c) hearings procedures, the Administrator intends to complete and transmit to the Council the 6(c) record of decision on February 20, 1987.

A prehearing conference has been scheduled before an independent hearing officer on January 12, 1987, at 9 a.m. at 1827 NE. 44th Avenue, Portland, Oregon 97213. Registration for the prehearing conference will begin at 8:30 a.m. Issues for discussion at the prehearing conference may include intervention of parties, discovery, the need for clarification sessions, the scope of cross-examination, hearing schedules, and other pertinent matters.

The 6(c) hearing on the proposed conservation/modernization program will be occurring during the time of BPA's 1987 Transmission and Wholesale Power Rate Adjustment Proceeding. 51 FR 40483; 40484 (Nov. 7, 1986). In the interests of any persons who may wish to participate in both the 6(c) hearing and the rate case, BPA is scheduling the hearings to take place in the same location. BPA intends to schedule the respective hearings such that persons participating in both hearings can attend each hearing with a minimum of inconvenience. Therefore, the Administrator has scheduled the prehearing conference for the 6(c) hearing (January 12, 1987) after the prehearing conference for the rate case (January 9, 1987) in order to assure that any changes in the rate case schedule will not impact the schedule of the 6(c) hearing on the conservation/modernization program.

During the prehearing conference, the hearing officer will act on all intervention petitions and oppositions to intervention petitions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with like interests into groups for purposes of jointly sponsoring testimony.

The prefiled testimony of BPA witnesses will be available on January 2, 1987, from BPA's Public Reference Room, 1002 NE. Holladay, Portland, Oregon 97232–4189. The telephone number for the Public Reference Room is 503–230–3478. A copy of the testimony will be sent to persons who may be requesting party status. During the 6(c) proceeding, copies of exhibits, studies, qualifications, attachments, and other relevant documents will be available to any interested person for review in the Public Reference Room.

The 6(c) procedures distinguish between "participants" and "parties." Those persons who wish to be "participants" in the hearing need only submit oral or written comments to the BPA Public Involvement Office or at the hearing itself. Participants' comments will become a part of the hearing record and their issues addressed in the record of decision. Participants are not entitled to cross-examine parties' witnesses, seek discovery, serve or be served with documents, and are not subject to the same procedural requirements as parties, such as cross-examination.

Persons who wish to be "parties" to the 6(c) hearing must file a petition to intervene, explaining their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing. A major resource sponsor, contracting entities, or the Council may intervene and gain party status upon request. All petitions must specify the person's interests in the outcome of the hearing. For this hearing on the conservation/modernization program, any Pacific Northwest aluminum smelter direct service

industrial customer of BPA, or its industry representative, will be granted party status.

Intervention petitions must be filed with the Hearing Officer, c/o Office of General Counsel—APP, Bonneville Power Administration, 1002 NE. Holladay, Portland, Oregon 97232–4189, and served on BPA's Office of General Counsel—APP, c/o James O. Luce, at the above address. Petitions for intervention in this proceeding must be filed and served by January 9, 1987. Pursuant to section 1(c) of the hearing procedures, BPA waives the requirement in section 5(d) that an opposition to an intervention petition be filed and served at least 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition to intervene.

Parties are subject to all procedural requirements contained in these hearing procedures and are entitled to service of documents from all other parties. Parties may also be cross-examined and are required to serve documents on the other parties. The hearing officer may allow BPA and the parties to engage in discovery subject to the time available for the hearing. In order to facilitate any discovery, the hearing officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. When clarifying sessions are scheduled, BPA and parties intending to participate in clarification of a witness' testimony will be required to serve all data requests relevant to that testimony 3 business days prior to the clarification session. The witness may answer data requests at the clarification session or answer in writing.

The hearing officer may schedule cross-examination as appropriate, limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in a statement of issues adopted by the hearing officer. The hearing officer is encouraged under these procedures to allow filing of surrebuttal testimony in lieu of cross-examination on any issue. At the close of cross-examination, parties may have the opportunity to file briefs. The Administrator may provide for an opportunity for the parties to present oral argument.

Persons need not attend the hearings in order to have their views included in the record. Written or oral comments may be included in the record if they are submitted by February 13, 1987. Procedures for submitting comments to BPA's Public Involvement Office are detailed in the Dates and Addresses sections of this notice.

The hearing record will include, among other things, transcripts of the hearing, testimony and exhibits, all comments submitted to BPA, briefs and pleadings, and any other materials and information submitted by BPA. The hearing officer will certify the record. From this record, the Administrator will prepare a record of decision which will identify and resolve each relevant major issue presented by BPA, parties, or participants in the hearing process. The record of decision will set forth the Administrator's decision on each of these issues.

Upon completion of the record of decision, the Administrator will promptly provide a copy of the record of decision to the Council. The Administrator will also promptly serve copies of the record of decision on all parties to the proceeding. Copies will also be available to the participants upon request to BPA's Public Involvement Office.

V. Statement of Issues

In order to assist the Administrator in making the determination that the conservation/modernization program is consistent with the Plan, two issues will be addressed in the 6(c) hearing on the conservation/modernization program. These two issues are set forth below:

Issues No. 1: whether the conservation/modernization program meets the goal of being a cost-effective resource as defined in the 1986 Plan.

Issue No. 2: whether the conservation/modernization program substantially meets the goals and objectives of the 1986 Plan for regional conservation efforts.

Issued in Portland, Oregon, on November 18, 1986.

Robert E. Ratcliffe,

Acting Administrator, Bonneville Power Administration.

[FR Doc. 86-26612 Filed 11-25-86; 8:45 am]

BILLING CODE 6450-01-M

[BPA File No: 6(c)-86]

Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Agency policy.

SUMMARY: On September 19, 1986, Bonneville Power Administration (BPA) issued a "Proposed Legal Interpretation of section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act" (Northwest Power Act or Act), 16 U.S.C. 839d(c). A notice of the availability of the proposed interpretation was also published. (*See* 51 FR 36841 (Oct. 16, 1986). Section 6(c) requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Pacific Northwest Electric Power and Conservation Planning Council's (Council) Northwest Conservation and Electric Power Plan (Plan). In addition, the Act also permits the Council to determine subsequently whether the proposal to acquire the major resource or conservation measure is consistent with the Council's Plan. If either BPA or the Council determine that the proposed major resource acquisition is inconsistent with the Plan, BPA can acquire the major resource only after receiving approval from Congress. BPA invited comments to its proposed interpretation and considered these comments in promulgating the following section 6(c) Policy (Policy). This Policy addresses the types of resource acquisition proposals subject to section 6(c) review, the procedures for section 6(c) hearings, and the criterion for a BPA finding of consistency with the Plan.

Responsible Official: John D. Carr, Director, Division of Planning and Evaluation, Office of Conservation, is the official responsible for this Policy.

FOR FURTHER INFORMATION CONTACT: Lynn W. Baker, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Room 376, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provision

Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839d(c), requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Council's Plan. In addition, the Act also permits the Council to determine subsequently whether the major resource or conservation measure is consistent with the Council's Plan. If either the Administrator or the Council determine that the proposed major resource acquisition or conservation measure implementation is inconsistent with the Plan, BPA can acquire the major resource or implement the conservation measure only after receiving expenditure authorization from Congress. Section 6(c) provides:

6.(c)(1) For each proposal under subsection (a), (b), (f), (h) or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

6.(c)(a)(A) publish notice of the proposed action in the **Federal Register** and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

6.(c)(1)(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

6.(c)(1)(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

6.(c)(1)(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

6.(c)(1)(D)(i) if a plan is in effect, finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

6.(c)(1)(D)(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

6.(c)(1)(D) In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

6.(c)(2) With sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

6.(c)(2)(A) that the proposal is either consistent or inconsistent with the plan, or

6.(c)(2)(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

6.(c)(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—

6.(c)(3)(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

6.(c)(3)(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

6.(c)(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

6.(c)(4)(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.

6.(c)(4)(B) publish notice of the decision in the **Federal Register**, and

6.(c)(4)(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

6.(c)(4) The Administrator may not implement any such proposal until ninety days after the date of which such proposal has been noted in such budget or after the date on which such decision has been published in the **Federal Register**, whichever is later.

6.(c)(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

B. Public Involvement

BPA and the Council issued a joint Issue Paper on July 29, 1986, in which the major issues involving section 6(c) were presented and alternative approaches were discussed and explored. BPA and the Council received 30 written comments in response to the Issue Paper. BPA and the Council also created a Consultation Group to meet with both agencies to discuss the Issue Paper and assist the agencies in the development of their respective proposed policies. This group met on July 24 and September 2, 1986.

On September 19, 1986, BPA issued a "Proposed Legal Interpretation of section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, Request for Comments." BPA also published a notice of the availability of the proposed interpretation. (51 FR 36841 October 16, 1986). BPA requested written comments from the public on the interpretation. BPA received comments from 25 parties, including publicly-owned utilities, investor-owned utilities, and organizations representing these utility groups, environmental and fish and wildlife interests, and direct service industrial customers. The following parties submitted written comments: W. Culham, Natural Resources Defense Council, H. Grant, National Wildlife Federation, M. Blumm, Montana Department of Natural Resources and Conservation, Intercompany Pool (two comments), National Marine Fisheries Services, Western Public Agencies Group, Pacific Gas and Electric Company, Idaho Attorney General, Pacific Power & Light Company, Pacific Northwest Utilities Conference Committee, Non-Generating Public Utilities, Public Power Council, The Washington Water Power Company (two comments), Washington State

Energy Office, Northwest Conservation Act Coalition, Direct Service Industries, Inc., Columbia River Inter-Tribal Fish Commission, B. Braaton, Oregon Department of Energy, and the Confederated Tribes of the Umatilla Indian Reservation. This policy has taken full consideration of the comments of these interested parties. These comments are addressed in BPA's Decision Document, dated November 12, 1986, which is available upon request from BPA's Public Involvement Office.

C. Scope of Policy

This Section 6(c) Policy addresses only proposals to acquire major resources under subsections (a), (b) and (1), and proposals to implement a conservation measure under subsection (a) and (b) which will conserve an amount of electric power equivalent to that of a major resource. This policy does *not* address proposals to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource under subsection (f), or proposals to grant billing credits or services involving a major resource under subsection (h).

II. Policy

A. Definitions

This section contains definitions of terms used in the Policy and is a part of the Policy. Terms defined in the Northwest Power Act have the same meaning in this policy, unless further defined.

1. *Acquire or acquisition.* To "acquire" means to incur, and an "acquisition" is, a contractual obligation to make payment for:

a. specified rights to the output or capability of a generating resource; or

b. the installation of specified conservation measures, or for conservation savings.

2. *Binding contract offer.* A "binding contract offer" exists when the Administrator presents a unilaterally executed contract for signature by the other contracting party.

3. *Conservation resource.* A "conservation resource" is actual or planned reduction of electric power consumption resulting from increases in the efficiency of energy use, production or distribution, by either:

a. the direct application of renewable resources by a consumer; or

b. the implementation of conservation measures.

4. *Generating resource.* A "generating resource" is actual or planned electric power capability of the following type of generating facility:

a. renewable resources, such as solar, wind, hydro, goethermal, biomass, or similar sources of energy; or

b. resources using waste heat or having high fuel conversion efficiency; or

c. thermal resources, such as nuclear and coal; or

d. combustion turbines.

5. *Option.* An "option" is the purchase of a unilateral right to acquire an existing or proposed generating or conservation resource within a particular time period on specified terms. No commitment to acquire a resource is made at the time an option is purchased. Options will be used as low-cost means to increase BPA's flexibility in meeting the range of future resource needs.

B. Threshold

1. *Proposals.*

a. The existence of a proposal, and when to initiate a section 6(c) hearing process on the proposal, will be determined by the Administrator. This determination will take into account, among other criteria, the existence of sufficient information concerning a proposed future resource action such that the proposal's compliance with statutory requirements and its consistency with the Council's Plan can be adequately assessed.

b. BPA shall consult with the Council and with representatives from the region prior to the time a section 6(c) review is initiated. Such consultation will address the advisability of modifying BPA's proposal and/or amending the Council's Plan. In addition, BPA shall consult periodically with the Council and representatives of the region with a view to discussing potential proposals to acquire resources within the context of section 6(c).

c. Given the necessarily preliminary current level of understanding of the types of resource acquisitions that may require review pursuant to section 6(c), the Administrator will initiate, at least once every 5 years, a public policymaking concerning the section 6(c) Policy, including threshold, procedures, and consistency criterion, in order to evaluate evolving understandings of resource acquisitions and to assess the need for changes in this Policy. The result of such public policymaking will be a final action for purposes of judicial review under section 9(e)(5) of the Northwest Power Act, or other applicable laws.

2. *Generating resources.*

a. A proposal to acquire a generating resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired at any one generating resource project constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

b. A proposal to acquire a generating resource through a utility system sale shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired from the utility for that sale constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

c. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition.

3. *Generation programs*

a. A generation program shall be subject to section 6(c) review if the Administrator proposes to one or more entitites binding contract offers to acquire more than 50 average megawatts of electric power for a period of more than 5 years:

(1) From a single generating resource technology, and

(2) At a fixed price or a fixed price formula.

b. The electric power proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition.

c. An individual contract resulting from a generation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

4. *Conservation resources*

a. A proposal to acquire a conservation resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired under a single contract constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

b. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition.

5. *Conservation programs*

a. A conservation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities generic contracts which consist of a set of logically related activiites

proposed by the Administrator to capture more than 50 average megawatts of energy savings in a recognized planning sector or subsector for a period of more than 5 years, and which either:

(1) Do not specify particular measures to be installed or implemented, but require an actual delivery of savings for payment; or

(2) Are provided by a single mode of program delivery and consist of a well-defined set of measures, but do not require actual delivery of savings for payment.

b. The energy savings proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition.

c. An individual contract resulting from a conservation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

6. *Requests for proposals*

a. A request for proposals (RFP) issued by the Administrator, which the Administrator has determined does not constitute a binding contract offer, shall not be subject to section 6(c) review.

b. In response to an RFP, the Administrator retains the discretion to acquire the electric power or the energy savings through an acquisition under sections 2–5, above. In the event of an acquisition under section 3 or 5, the Administrator may choose to expand the program to entities which did not participate in or respond to the RFP.

7. *Options to acquire major resources*

a. A proposal to purchase an option shall not be subject to section 6(c) review.

b. A proposal to exercise a major resource option shall be subject to section 6(c) review.

8. *Section 6(1) Resources*

a. A proposal to acquire a major extraregional renewable resource shall be subject to section 6(c) review.

b. Interregional exchanges are not subject to section 6(c) review.

C. Section 6(c) Hearings Procedures

The appendix, incorporated by reference into this Policy, specifies the procedures for the section 6(c) hearings.

D. Consistency

A BPA proposal pursuant to section 6(c)(1) of the Northwest Power Act shall be found consistent with the Northwest Conservation and Electric Power Plan if it is judged to be so structured that it will achieve substantially the goals and objectives of the Plan in effect at the time the proposal is made.

Issued in Portland, Oregon, on November 12, 1986.

James J. Jura,

Administrator.

APPENDIX TO POLICY FOR SECTION (6)(c) OF THE PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

Section 6(c).—Hearings Procedures

1. Applicability and Scope

(a) *General Procedures.* These procedures apply to all proceedings conducted under the procedural requirements contained in section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839d(c)

(b) *Scope.* The scope of all proceedings conducted under these procedures shall be limited to an inquiry into whether the action proposed by the Administrator will achieve substantially the goals and objectives of the Council's Plan.

(c) *Waiver.* To the extent permitted by law, the Administrator may waive any section of these procedures or prescribe any alternative procedures he determines to be appropriate.

2. Definitions

(a) "Administrator" means the BPA Administrator or the Acting Administrator.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Council" means the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council.

(d) "Hearing Officer" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act Section 6(c).

(e) "Legal Issue" includes any issue grounded on any contractual right or obligation, and of BPA's organic statues, the administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing on the propriety of the action proposed by the Administrator.

(f) "Participant" means any person submitting for the record oral or written comments pursuant to section 6 of these procedures on a major resource action proposed by the Administrator.

(g) "Party" means any person whose intervention is effective under section 5.

(h) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, any agency, department, or instrumentality of a state, a state compact agency or interstate body, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(i) "Record" means the testimony, exhibits, transcripts, notices, comments briefs, pleadings, and such other materials and information as submitted or developed by the Administrator. The record shall be certified by the hearing officer.

(j) "Record of Decision" means the document, issued by BPA which identifies and resolves each relevant, major issue in the 6(c) hearing; summarizes the factual, legal and policy arguments presented by BPA, the parties, and the participants on such issue; and sets forth the Administrator's decision on such issue.

3. Notice of Proposed Action

(a) The Administrator shall publish notice of any proposed action pursuant to Section 6(c) in the **Federal Register** and provide a copy of the notice to:

(1) The member of the Council and its executive staff;

(2) The Government of each State in the Pacific Northwest Region;

(3) The Administrator's customers; and

(4) Others the Administrator deems appropriate.

(b) The Administrator may initiate the section 6(c) process with this notice by indicating a date, not less than 60 days following publication of this notice, on which a public hearing or hearings will be held pursuant to section 6(c). This notice must comply with the requirements of section 4.

4. Initiation of Section 6(c) Process

(a) A section 6(c) process on the Administrator's proposed major resource action may be initiated by a hearing notice published in the **Federal Register.** The hearing notice shall:

(1) Specify the proposed major resource action;

(2) Establish a deadline for filing petitions to intervene;

(3) Specify the date on which the Administrator will issue the Record of Decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing;

(4) Establish the dates on which the hearing officer will conduct the prehearing conference and commence the 6(c) hearing;

(5) Set forth a statement and short explanation of each of the issues to be addressed in the hearing; and

(6) Provide other information which the Administrator determines to be pertinent to the hearing.

(b) The Administrator shall provide a copy of the notice to the persons identified in section 3(a).

5. Intervention

(a) *Filing.* A person seeking to become a party in a 6(c) hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APP.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. The major resource sponsor, contracting entities, or the Council shall be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.* (1) Petitions must be filed within the time specified in the section 4 notice of the hearing in question.

(2) Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) The petitioner has a good reason for filing out of time;

(ii) Any disruption of the proceeding might result from allowing a late intervention;

(iii) The petitioner's interest is adequately represented by existing parties; and

(iv) Any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within 2 business days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in sections 8–14 are available only to parties, and are not available to participants.

6. Participation

Any person who is not a party may become a participant by submitting oral or written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comment. Oral or written comments must be submitted to the BPA Public Involvement Office.

7. Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's section 4. **Federal Register** notice. During the conference, the hearing officer shall:

(a) Act on all intervention petitions;

(b) Establish any special procedures the hearing officer considers appropriate, provided that such special procedures conform to BPA's procedures governing proposed major resource actions;

(c) Establish a service list;

(d) Establish a procedural schedule for the entire hearing which may include the scheduling of prefiled testimony; and

(e) Consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

8. Discovery

The hearing officer may allow BPA and the parties to any 6(c) hearing to engage in discovery, and be subject to discovery requests, subject to the time available for the hearing and according to the following rules:

(a) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. Requests shall be addressed to counsel for the party to whom the request are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served on the requesting party or counsel for the requesting party.

(b) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require that BPA and the parties wishing to participate in clarification of a witness' testimony serve all data requests pertaining to that testimony at least 3 business days prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (a) of this section.

(c) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(d) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolve the objection informally with the objecting party. Motions to compel must be made within the time specified in the procedural schedule.

(e) *Privileged Information.* The hearing officer may issue protective orders or make in camera inspection of documents as necessary to protect copyrighted, proprietary, or othewise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. section 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(f) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) Striking the testimony or exhibits to which the question or request relates; or

(2) Limiting discovery or cross-examination by the party refusing to answer or respond.

(g) *Copies.* Any party wishing copies of data responses should request them from the party submitting the response.

9. 6(c) Hearing Schedule

(a) *General Rule.* Consistent with fairness to the parties and participants, the hearing officer may establish procedures and conduct hearings as necessary to develop a full and complete record and to receive public comment and argument related to the proposed major resource action. The Record of Decision in 6(c) hearings shall be issued on the date set forth in the notice issued under section 4., except as provided in paragraph (b) of this section.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request

in writing an extension of time from the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within 4 days thereafter.

10. Testimony and Exhibits

(a) *General Rule.* (1) The opportunity for refutation or rebuttal on any material submitted by any other party or by BPA shall be provided to the parties as the hearing officer deems appropriate. Except as provided in paragraph (b), witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by leave of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party's wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of such documentation, which exclude irrelevant or redundant material.

(b) *Items by reference.* Other testimony, exhibits, or studies may be designated as items by reference in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Offical notice.* The hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of participants.* Testimony and comments received pursuant to section 6. shall be compiled in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

11. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-examination.* (1) Cross-examination shall be provided as the hearing officer deems appropriate and shall be limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in a statement of issues adopted by the hearing officer. The hearing officr may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz.*, friendly cross-examination.

(c) *Cross-examination exhibits.* (1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witness' counsel 3 business days prior to the date set for cross-examination.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

12. Briefs.

(a) *General rule.* (1) At the conclusion of the evidentiary portion of a hearing, the hearing officer may allow each party to submit a brief. The purpose of a brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(2) All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

13. Oral Argument

An opportunity for parties to present oral argument may be provided at the discretion of the Administrator.

14. Service of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under section 6., service on parties may be made by service on BPA General Counsel/APP. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons upon whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by section 8 (b) and (h).

15. Record of Decision

(a) *Determinations.* The Administrator shall make public a written decision which contains the following two determinations:

(1) The proposed action satisfies the requirements of subsection (a), (b), (f), (h), (l), or (m) of section 6 of the Northwest Power Act, as appropriate; and either:

(2) The proposed action is consistent with the Council's Plan; or

(3) The proposed action is inconsistent with the Council's Plan; or

(4) Nothwithstanding the proposed action's inconsistency with the Council's Plan a finding that the proposed action is needed to meet the Administrator's obligations under the Northwest Power Act.

(b) *Submission of Record.* The Administrator shall promptly provide a copy of the Record of Decision to the Council.

(c) *Service of Record.* The Administrator shall promptly serve copies of the Record of Decision on all parties to the proceeding. Copies of the

Record of Decision shall be made available to participants and the public upon request to BPA's Public Involvement Manager.

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Record of Decision; Proposed Conservation/Modernization (Con/Mod) Program; Direct Service Industry Options Environmental Impact Statement (EIS)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Aluminum Smelter Conservation/Modernization Program Offering.

SUMMARY:

Decision

The Bonneville Power Administration has decided to offer the Con/Mod option analyzed in the Final EIS (DOE/EIS-0123F) and the *DSI Options Study* (Options Study, DOE/BP-475 and 477) that provides a 5 mills per kilowatthour (/kWh) incentive to all the region's aluminum smelters for electric energy efficiency improvements resulting from plant modernization.

Decision Factors

BPA considered several factors before the decision was made to offer the Con/Mod program. The decision factors included: (1) Legal requirements; (2) stabilization of BPA revenues and loads; (3) economic effects on other BPA customers; (4) equity for all aluminum plants in the region; and (5) socioeconomic and physical environmental impacts.

Alternatives

Con/Mod

Con/Mod consist of onsite modifications and retrofits to improve the production efficiency of aluminum smelters.

BPA studied three levels of Con/Mod incentive in the Final EIS: 3, 5, and 10 mills/kWh of energy saved. In addition, three approaches were considered for how BPA should offer a Con/Mod program: (1) A pilot program whereby only one or two of the total ten smelters in the region would participate, based on a competitive solicitation (the pilot program would be expanded at a later time to include the remaining smelters); (2) a targeted program whereby the oldest, least efficient smelters would be targeted for BPA financial support to modernize; and (3) a program offered-to-all aluminum smelters in the region on a non-competitive basis.

Other program features of the proposed Con/Mod program were discussed in the program development process, such as program duration and term of payment, but these features are not anticipated to affect physical environmental impacts. A no-action alternative was also considered.

No Action

BPA would not offer Con/Mod to the aluminum industry, but rather rely on the smelters to modernize solely on their own.

Environmentally Preferred Alternative

The Con/Mod program, in combination with the variable rate which was recently implemented (Variable Industrial Power Rate Record of Decision, 51 FR 23811), is the environmentally preferred alternative. Together they offer an improved atmosphere for aluminum companies to make long-term decisions related to operation and facility upgrades. Those decisions will be based on electricity costs that are relatively responsive to aluminum market conditions and a fixed incentive offered for energy saved through plant modernization.

Rationale

Based on the Final EIS, BPA determined that the socioeconomic factors outweigh any environmental impacts that may result from actual physical modifications and process changes used to effect Con/Mod at Northwest aluminum smelters. Any environmental impacts from a combination of the proposed Con/Mod with the variable rate would also be outweighed by the socioeconomic benefits, particularly the resulting continued employment in the region.

Mitigation

Adverse environmental impacts are not likely to result from BPA's proposed Con/Mod program or cumulatively from the Con/Mod program with the variable rate. Specific environmental mitigation measures for the Con/Mod program are not needed and none are proposed.

Monitoring

BPA does not plan to monitor environmental effects of the proposed Con/Mod initiative. The aluminum companies are required to monitor their environmental performance and make periodic reports to the environmental regulatory agencies that have jurisdiction in their respective geographic locations.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208, telephone (503) 230-5136.

SUPPLEMENTARY INFORMATION:

Background

The BPA has been considering three options to help stabilize the alumium Direct Service Industries' (DSI) loads, thereby maintaining and possibly enhancing BPA's revenues. These aluminum smelters purchase power directly from PBA. Collectively, they are facing an economic downturn in the current metals market and competition worldwide from newer, more efficient plants. Two smelters in the region already have closed and others are operating well below production capacity levels.

From a legal standpoint, the decision to make the Con/Mod program available to the region's smelters is authorized by sections 2(1)(A) and 6 of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act), 16 U.S.C. 839(1)(A), 839d; section 11(b) of the Federal Columbia River Transmission System Act, 16 U.S.C. 838i(b); section 2(f) of the Bonneville Project Act, 16 U.S.C. 832a(f) [as affirmed in Section 9(a) of the Northwest Power Act, 16 U.S.C. 839f(a)]; and other laws.

BPA completed the *Final Environmental Impact Statement, Direct Service Industry Options* in April 1986. In the Final EIS, BPA analyzed the potential environmental impacts of no action and alternatives for each of three options identified in the BPA publication entitled *DSI Options Study, Final Report*, Parts 1 and 2, June 1985 (DOE/BP-475 and 477). The three options identified were: (1) A variable rate to the aluminum smelter DSI's based on market prices for aluminum; (2) a conservation/modernization program incentive to encourage the aluminum smelter DSI's to modernize; and (3) a rate "link" between rates charged BPA's preference customers and those charged the DSI customers (the IP-PF rate link).

The major effects examined in the Final EIS included aluminum smelter operations, resource operations and development, and environmental and socioeconomic impacts.

The three options, or actions, are not alternatives to each other since each could be implmented independently. One of the options considered, the variable rate, has already been offered by BPA and accepted by the region's

primary aluminum smelters. This occurred only after completion of the Final EIS and the Variable Industrial Power Rate Record of Decision (ROD).

This ROD pertains only to the Con/Mod program for aluminum smelters and does not resolve issues relating to the proposed IP–PF rate link, which still is under consideration by BPA. In arriving at its decision on the Con/Mod program, BPA considered potential impacts identified in the Final EIS of implementing such a program, as well as potential cumulative impacts associated with implementing a Con/Mod program in combination with the recently adopted variable rate.

Decision

BPA has decided to make an Aluminum Smelter Conservation/Modernization Program available to the region's primary aluminum smelters.

The Con/Mod program will provide 5 mills/kWh for energy saved by the aluminum companies through electric energy efficiency improvements. BPA will provide 10-year payment terms in return for a reduction in each participating company's contract demand (i.e., the maximum power entitlement provided to a Direct Service Industry by BPA). The contract demand reduction will provide energy to the region when BPA determines it is needed.

The program will be offered to all the primary aluminum smelters located in the BPA service area. The program will be available to the aluminum smelters through the term of the Power Sales Contracts with the DSI's.

The Con/Mod program is designed to support additional capital investments by the aluminum companies to modernize the region's primary aluminum smelters, thereby helping to stabilize BPA's system loads and power sales revenues.

For as long as it operates, the program proposed by BPA will make available assistance to the Northwest aluminum industry as a whole. Business decisions on the part of the companies will determine program participation. Participation by companies will benefit BPA, the aluminum industry, and the region by providing for more stable BPA loads and revenues in the short term. In the long term, the energy conservation acquired from the smelters will provide additional power to the region when it is needed.

Alternatives

The following alternatives were analyzed in reaching the decision to offer the Con/Mod Program:

A. *No-Action Alternative.* Under the no-action alternative, an aluminum smelter conservation/modernization program would not be offered. The no-action alternative described in the Final EIS assumed continuation of the rate provisions previously in effect for DSI power sales (prior to the recent offering of the variable rate). That is, it assumed continuation of rate design features in the industrial firm power (IP–85) rate schedule. However, the level of the rate was presumed to change over time, as dictated by BPA costs and revenues computed by the BPA Decision Analysis Model (DAM). Among the features of the no-action alternative defined in the IP–85 rate schedule is the provision for offering an incentive rate when BPA revenues would be increased by doing so.

Subsequent to the completion of the Final EIS (DOE/EIS–0123F), BPA implemented the variable rate for the region's primary aluminum smelters. Hence, the "no-action" alternative now includes the variable rate.

B. *Conservation/Modernization (Con/Mod) Program Alternative.* Under the Con/Mod Alternative, BPA would offer an incentive to the aluminum smelters to make outsite modifications and retrofits to improve their production efficiency.

1. BPA studied three Con/Mod incentive levels in the Final EIS:

a. A 3 mills/kWh saved incentive;

b. A 5 mills/kWh saved incentive; and

c. A 10 mills/kWh saved incentive.

2. In addition, BPA considered three approaches related to how BPA would offer a Con/Mod program:

a. A pilot program whereby only one or two of the total ten smelters in the region would participate based on a competitive solicitation. The pilot program would be expanded at a later time to include the remaining smelters;

b. A targeted program whereby the oldest, least efficient smelters would be targeted for BPA financial support to modernize; and

c. A program offered to all the aluminum smelters in the region on a non-competitive basis.

Rationale

BPA based its decision on five major factors. Those factors and the role each played in the decision are described below.

A. *Legal Requirements.* The Northwest Power Act places a priority on conservation resources. One of the purposes of the Act is to encourage conservation and efficiency in the use of electric power. The Administrator is also authorized to encourage the widest possible use of electric power at the lowest possible rates consistent with sound business principles and to make expenditures to carry out his duties. Modernization of the aluminum smelters is intended to improve the efficiency in the use of electric power in the aluminum production process. The resulting stabilization of the DSI load and maintenance of BPA revenues through the near term actions encouraged by Con/Mod, together with conservation through future load reduction, meet the Administrator's statutory obligations and objectives.

The no-action alternative does not meet the statutory obligations and objectives.

B. *Stabilization of BPA Revenues and Loads.* In recent years, the amount of aluminum smelter power purchases from BPA has fluctuated dramatically from year to year. The changing power demand has resulted in uncertainty about how much load BPA should plan to meet and the amount of resources to acquire, resulting in additional uncertainty about predicate rates. Lower levels of operation at Northwest aluminum smelters also have contributed to weakness and instability in the region's economy as a whole. Short-term attempts to alleviate these problems have been only partially successful. Of the ten aluminum smelters located in the Pacific Northwest, two are now closed. Collectively, when all the region's smelters are operating at historical capacity levels, they provide 25 percent of BPA's revenues through power purchases and account for 30 percent of BPA's total system loads.

BPA desires to stabilize the DSI aluminum smelter loads in order to gain more certainty related to load forecasting, planning, and revenues. Forecasting stable revenues would enhance BPA's ability to make the necessary payments to the U.S. Treasury and would stabilize rates to other BPA customers.

The short-term objective of the Con/Mod initiative is to stabilize BPA loads and revenues through modernization of the region's energy-intensive aluminum industry. The long-term objective is to acquire conservation from efficiency improvements that result from modernization of the smelters.

No-Action Alternative: The no-action alternative, which represented the status quo prior to the offering of the variable rate, did not meet the need for stabilizing the region's aluminum smelters. Even with the variable rate, the no-action alternative does not meet the objective of modernizing the region's aluminum smelters. Under no-action, BPA presumably would offer DSI

incentive rates on a short-term basis (DOE/EIS–0123F, p. 12). However, these periodic incentive rate offerings have been only partially successful in stabilizing DSI loads in recent years. Furthermore, the variable rate alone does not provide incentives specifically for smelter modernization that the aluminum companies need to influence their long-term smelter operating decisions.

The Con/Mod Alternative: The Con/Mod alternative, in combination with the variable rate, offers the likelihood of the highest production levels at operating smelters (DOE/EIS–0123F, pp. 90–102). Therefore, this alternative presents a greater potential for BPA revenue stability.

C. *Avoidance of Adverse Economic Effects to Other BPA Customers.* One of the design principles for a Con/Mod program identified in the *DSI Options Study* is that other BPA ratepayer classes should not be expected to pay for a program that would primarily benefit only the aluminum DSIs.

No-Action Alternative: Under the no-action alternative, additional aluminum smelter closures would be more likely. In this event, BPA's other customer classes would experience any wholesale rate increases necessary for BPA to meet its payment obligations to the U.S. Treasury.

Additionally, operating levels of some energy-intensive industries purchasing power from retail utilities could be adversely affected if lost revenues to BPA from aluminum plant closures or reduced operations ultimately result in significant rate increases at the retail level. Decreased operating levels for retail industrial consumers could result in additional layoffs.

Finally, wholesale rate increases resulting from aluminum plant closures could discourage some new industries from locating in the Pacific Northwest. This would be more of a factor for those electrical energy-intensive industries from whom rate level and long-term rate stability are important.

Con/Mod Alternative: A Con/Mod incentive in combination with the variable rate probably would result in a higher average level of aluminum production by the region's smelters than would the variable rate alone. A higher average operating level would help to stabilize BPA revenues required to maintain BPA's payments to the U.S. Treasury.

The Con/Mod Alternative would also "secure" or "include" the right for BPA to reduce a participating aluminum company's contract demand (maximum power entitlement provided by BPA) in return for BPA's financial support of plant modernization. A reduction in a company's contract demand would create a benefit to other ratepayers by providing additional power to the region when it is needed, therefore eliminating some of the high cost of new generating resources.

Finally, encouraging continued smelter operations results in continued employment of aluminum workers which has a significant socioeconomic benefit to the region as a whole.

D. *Equity for All Aluminum Plants in the Region.*

No-Action Alternative: Under the no-action alternative, there would be no Con/Mod offering to any of the region's aluminum smelters. Therefore, it could be concluded that the results would not favor one or more smelter(s) over the others.

Con/Mod Alternative: Three approaches to offering Con/Mod to the region's aluminum smelters were evaluated during the design process: (1) a pilot program, (2) a targeted program, and (3) offering Con/Mod to all the region's smelters. However, a guiding principle in the design of the Con/Mod program was to ensure that the program would not unfairly advantage one aluminum smelter over another.

1. *Pilot Program.* In a pilot program, BPA would select one or two facilities as a test of the program and its features. Results of that test would lead to program modifications and a decision whether to extend the offer.

BPA maintains that the *modernization* objective would not be met by a pilot activity. That is, a pilot program would not be sufficient to stabilize the region's aluminum industry by only offering incentives to one or two of the smelters. The *conservation* objective could be met by pilot activity, followed later by a regionwide program available in the early 1990s. However, a pilot program could unfairly advantage one or two aluminum smelters in the region.

2. *Targeted Program.* In a targeted program, BPA would select only the least efficient facilities and provide funds for ungrades. Analysis identified a targeted program as potentially more effective in facilitating upgrades in the plants that are most threatened by the current state of their economies of production. However, this approach was not pursued because: (a) A targeted program is not sufficiently sensitive to the competitive positions of the Northwest plants with one another; (b) determination of effective reimbursement levels and selection of the facilities under a targeted program would be a lengthy and difficult process (undermining the short-term stabilization objective of the program); and (c) a targeted program would put BPA in the position of making business decisions for some of the region's smelters.

3. *Program Offering-to-All Smelters.* This approach offers the Con/Mod program to all of the region's aluminum smelters on a non-competitive basis.

The aluminum industry is highly competitive. BPA is concerned that limiting program eligibility to certain smelters could result in creating a competitive advantage for one plant over another. Offering the program to all smelters is more conducive to the near term goal of stabilizing the aluminum industry in the region as a whole, thereby maintaining BPA revenues and system loads.

E. *Socioeconomic and Environmental Impacts.*

No-Action Alternative: Computer modeling results for the no-action alternative predict average probabilities of operating for each of the region's aluminum smelters. Some plants have a quite high probability of remaining in operation according to the model (e.g., Intalco and Alcoa Wenatchee) while others have a relatively low probability of continuing operation. Those in the latter class are Reynolds at Troutdale; Alcoa at Vancouver (closed in June 1986); and Kaiser at Mead. (All model results for the Alcoa smelter at Wenatchee were for the portion of the plant served only by BPA.)

The employment impacts of smelter closures or reduced operation would tend to be concentrated in immediate areas surrounding the affected aluminum plants. However, there would be some residual effects on regional employment. Certain regional businesses that supply goods and services to the aluminum smelters would face a reduction in demand for their products, thus potentially resulting in employee layoffs.

Closure or reduced operation of some or all of the aluminum smelters could also result in a significant loss of revenues to BPA. The magnitude of the revenue reduction would depend on BPA's ability to market the displaced power at rate levels greater than or equivalent to those paid by the DSI's. A significant revenue reduction would require an overall wholesale power rate increase in order for BPA to recover its costs and continue timely payments to the U.S. Treasury. An overall rate increase would increase costs to the remaining DSI's and to utilities purchasing wholesale power from BPA. Therefore, closure or reduced operation of some aluminum smelters could ultimately have impacts on retail

industrial, commercial, and residential consumers.

Closure of an aluminum smelter would reduce the amount of air pollutants emitted into an airshed. Presumably, this would increase the opportunities for other industrial development in an area under prevention of significant deterioration (PSD) rules, although the actual occurrence of such development would be dependent on many other site-specific factors. At a number of the sites, PSD rules are not currently a significant constraint to moderate industrial development. Implementing a proposal or alternative which would keep an aluminum plant open would basically maintain the status quo with respect to opportunities for other industrial development under PSD rules.

The no-action alternative may be viewed as having no environmental impact in itself because the status quo environmental effects would continue as long as the plants continue to operate. However, with no action by BPA, additional plant closures could result in a future different from a simple extension of the current situation.

Con/Mod Alternative: BPA modeled the likely outcome of three Con/Mod incentive levels. To test the sensitivity of the effectiveness of a Con/Mod program, studies were made at long-run aluminum prices of both 65 cents per pound (¢/lb.) and 70¢/lb. The lower assumed long-run aluminum price (65¢/lb.) results in similar trends in employment and smelter operations to those at 70¢/lb.

Cumulative impacts on Northwest aluminum industry employment of the combination of a Con/Mod program offered equitably to all smelters is dependent on the level of Con/Mod incentive provided. With a moderate (3 to 5 mills per kilowatthour) incentive, the impacts are little different than with the variable rate alone. With a high (10 mills per kilowatthour) incentive, substantial gains in Northwest aluminum industry employment are likely (DOE/EIS–0123F, p. 118).

At 3 mills/kWh and a long-run aluminum price of 70¢/lb., increases in probability of operation are slight or non-existent for all smelters. Aluminum smelter impacts are, therefore, essentially the same as for the no-action alternative. Con/Mod, to the limited extent it may occur, is not expected to change smelter operational impacts substantially (DOE/EIS–0123F, p. 105). There could be some minor smelter employment impacts since one of the objectives of a Con/Mod measure is likely to be a reduction in labor costs as well as power costs. This is not shown, however, by the smelter employment results from the model which shows an overall near-term reduction of less than 1 percent and long-term gains of also less than 1 percent (DOE/EIS–0123F, p. 105).

When funding levels are increased to 5 mills/kWh with a long-run aluminum price of 70¢/lb., some increases in operation might occur at a number of plants, but no particular plant characteristic seems to trigger such an increase. The increase is as great as 8 percent for Columbia Falls in Fiscal Year 1997–2000, but is more typically 1 or 2 percent for most plants in most periods. Environmental impacts from smelter operations of this alternative are a little greater than for the 3 mills/kWh incentive alternative. Smelter employment impacts are projected as a negligible decrease in the near-term, and increases of less than 5 percent in the later periods, on average (DOE/EIS–0123F, p. 105).

BPA's analysis concluded that limiting the Con/Mod incentive to 5 mills/kWh saved will also produce a "win-win" result by protecting other ratepayer classes from higher wholesale rates due to a program offering.

At a 10 mills/kWh Con/Mod incentive and a long-run aluminum price of 70¢/lb., all the plants are projected to increase their probability of operating over the no action alternative. Some plants improve by over 10 percent in some periods. Generally, the more efficient, lower cost smelters show smaller improvements than the higher cost plants and improvements are greater in the later periods, probably because the aluminum price in the model trends higher in later periods (DOE/EIS–0123F, pp. 105–107).

BPA analysis concluded that a 10 mills/kWh Con/Mod incentive level would have an adverse economic effect on other BPA ratepayer classes. This effect would violate the "win-win" principle described in the *DSI Options Study*. However, higher levels of smelter employment would be expected at an incentive level of 10 mills/kWH than at lower incentive levels (DOE/EIS–0123F, p. 111).

Participation in a Con/Mod program will be optional to all smelters. Hence, if the level of incentive offered for modernization is considered inadequate by the aluminum companies, then a Con/Mod incentive at any of the three levels will not alter operation of the smelters, nor will it prevent them from closing.

Addition of a Con/Mod incentive to the variable rate is not expected to substantially improve the likelihood of reopening the smelter at The Dalles, or to substantially affect a decision to close the smelter at Columbia Falls, Montana, since both plants already have undergone major investments to make them more energy-efficient.

Still, it is expected that a Con/Mod incentive in combination with the variable rate probably would result in a higher average level of aluminum production by the region's smelters than would a variable rate alone. The higher the level of Con/Mod incentive, the greater the potential effect on smelter operating levels (DOE/EIS–0123F, p. 116–118). The actual physical modifications to smelters associated with implementation of a Con/Mod program would not be expected to increase the smelters' production of various air and water pollutants per ton of aluminum produced. A number of the modernization measures expected to be undertaken would tend to reduce emissions.

Furthermore, the actual physicial modifications and process changes used to effect Con-Mod at Northwest aluminum smelters are expected to have minimal physical environmental impact for two reasons: (1) Federal and State environmental regulatory control already exists, and (2) modifications or retrofits to aluminum smelters are not anticipated to increase pollutant discharges.

Changes in operation of thermal and hydroelectric resources resulting from a Con/Mod program are expected to be minor because of compensating actions BPA would take to market to others any power made available as a result of DSI load reductions (DOE/EIS–0123F, p. 132). Effects on thermal or hydroelectric generating resource operation from the proposed Con/Mod alternative in combination with the variable rate also are not significant (DOE/EIS–0123F, p. 132).

The impact on future need for acquiring new generating or conservation resources of having available a Con/Mod program in addition to the variable rate is unclear. Compared to having the variable rate alone, smelter loads on average likely would increase with the Con/Mod program since the smelters would tend to operate more. On the other hand, the smelters would be more efficient and, assuming their production capacity stayed constant, their loads at maximum production would decrease. The effect of having a Con/Mod program in addition to the variable rate on the need for future resources is dependent on whether smelters increase their production capacity with the Con/Mod program; which smelters choose to

modernize; future aluminum prices, which greatly influence smelter operating levels; and the contractual terms chosen to secure the conservation savings. No definitive statement of impacts may be made without speculation (DOE/EIS–0123F, p. 109).

Environmentally Preferred Alternative

Selection of the environmentally preferred alternative entails balancing negative physical impacts with positive socioeconomic benefits. The Con/Mod alternative is environmentally superior to the no-action alternative described in the Final EIS when taking into account socioeconomic and physical environmental effects.

Under the Con/Mod alternative, the currently closed smelter at Vancouver, Washington, would have a higher probability of operating in the future than under no action. The Con/Mod program combined with the variable rate also would reduce the probability of closures and fluctuations in production levels at the other smelters. Therefore, the combination of these options would allow for higher, more stable employment in the region's aluminum industry (DOE/EIS–0123F, pp. 49–52, 97–102, 119–120.)

If the Con/Mod program and the variable rate together would result in reopening of the Vancouver plant, the physical impacts on the locale of the plant would be greater than under no action. However, any adverse physical impacts of this plant would be within the limits established by its environmental permits and would not be substantial. Avoiding permanent closure of this plant probably would require earlier development of new generating or conservation resources than under no action. However, because BPA expects to have a resource surplus for several years, the real effect that continued operation of the Vancouver plant would have on BPA's resource acquisition is somewhat uncertain. Finally, the Con/Mod program with the variable rate would not result in adverse physical impact from hydro and thermal resource operation that would exceed those under no action. This is because of actions BPA would take to market power freed up by smelter closures.

In summary, addition of the Con/Mod program to the variable rate is the environmentally preferred course of action. The socioeconomic benefits of preserving, stabilizing, and possibly increasing aluminum smelter employment, and of preserving and stabilizing BPA revenues under the proposal, would outweigh any adverse effects of the proposed Con/Mod program on the physical environment because those effects are regulated under Federal, State, and local regulations and permits. The adverse socioeconomic impacts of the no-action alternative would outweigh any positive physical impacts. The Con/Mod program in addition to the variable rate is environmentally preferred over having only the variable rate.

Mitigation

Adverse environmental impacts are not likely to result from BPA's proposed Con/Mod program. Also, it is unlikely that the proposed Con/Mod program will result in new aluminum plant production capacity in the region.

Physical impacts could result if aluminum plants operating levels increased. However, all of the aluminum planst are required to comply with Federal and State laws and regulations for protection of the environment. Air pollution control equipment already has been installed in the plants to comply with regulatory requirements. Existing groundwater pollution problems from past practices at some smelters are being addressed by State and Federal environmental agencies. Facilities for storage of spent potliners have been improved at some of the plants, reducing chances for further contamination from cyanide-containing leachate. Therefore, specific mitigation measures for the Con/Mod program are not needed and none are proposed.

Any changes in hydroelectric resource generation that might occur as a result of changes in aluminum smelter loads will be limited by factors constraining river operations. These factors include flood control, navigation, recreation, and mitigation for fish. Under the terms of the Northwest Power Act, BPA is required to protect, mitigate, and enhance fish and wildlife to the extent affected by development and operation of hydroelectric projects on the Columbia River or its tributaries. BPA, the U.S. Army Corps of Engineers, and the Northwest Power Planning Council will continue to develop and implement effective spill, bypass, and transportation programs to facilitate passage of downstream migrating smolts.

Monitoring

BPA does not plan to monitor environmental effects of the proposed Con/Mod initiative.

Generally, smelters are required, as a condition of their permit, to report to the responsible environmental regulatory agency any physical or operational change which would increase air pollutant emissions, discharges of water pollutants, or hazardous waste generation, except for a simple change in production level within design production capacity.

The aluminum companies are also required to monitor their environmental performance and make periodic reports to the environmental regulatory agencies that have jurisdiction in their respective geographic locations. Furthermore, the plants are periodically inspected by regulatory agency personnel. For any change in emissions discovered through the preceding, the regulatory agencies have authority to require a change in one or more of the plants' environmental permits.

For any substantial change in the smelter, such as an increase in capacity or a change in the type of pollution control device, a permit modification or a new permit would be required. Permits also expire periodically and must be renewed for a plant to continue to operate. When a permit is being granted, renewed, or modified, the regulatory agency assures compliance to the established regulations and standards.

Moreover, regulatory agencies generally go beyond the strict requirements of the regulations and standards, and may impose more stringent measures or additional requirements if needed to protect the environment, or if they are otherwise practical (e.g., a smelter's past performance indicates it can meet a stricter permit).

Issued in Portland, Oregon, on November 18, 1986.

Robert E. Ratcliffe,

Acting Administrator, Bonneville Power Administration.

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Federal Energy Regulatory Commission

Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued: November 20, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83–3 and RM81–12 (48 FR 44,508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and

qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On November 12, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 41 leases were issued as a result of OCS Sale 105 for the Western Gulf of Mexico on August 27, 1986. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA Section 102:

Lease No. OCS-G	Area	Block	Effective date
8545	Mustang Island	A-34	Nov. 1, 1986.
8546	Matagorda Island	566	Oct. 1, 1986.
8547	do	680	Do.
8548	do	688	Do.
8549	Brazos	A-51	Nov. 1, 1986.
8550	Galveston	188	Oct. 1, 1986.
8551	do	359	Do.
8552	do	360	Nov. 1, 1986.
8553	do	418	Do.
8554	do	A-68	Do.
8555	Galveston South	A-221	Oct. 1, 1986.
8556	High Island	35	Do.
8557	do	73	Nov. 1, 1986.
8558	do	109	Oct. 1, 1986.
8559	do	A-18	Nov. 1, 1986.
8560	do	A-76	Oct. 1, 1986.
8561	do	A-126	Nov. 1, 1986.
8562	do	A-127	Do.
8563	High Island East	46	Do.
8564	do	A-234	Oct. 1, 1986.
8565	High Island South	A-425	Do.
8566	do	A-468	Nov. 1, 1986.
8567	do	A-512	Do.
8568	do	A-513	Do.
8569	do	A-528	Do.
8570	High Is East Add South Ex	A-314	Oct. 1, 1986.
8571	do	A-320	Nov. 1, 1986.
8572	do	A-322	Do.
8573	do	A-378	Do.
8574	do	A-379	Oct. 1, 1986.
8575	do	A-397	Nov. 1, 1986.
8576	East Breaks	598	Oct. 1, 1986.
8577	do	599	Do.
8578	Garden Banks	156	Do.
8579	do	199	Do.
8580	Alaminos Canyon	600	Do.
8581	do	601	Do.
8582	do	731	Do.
8583	do	775	Do.
8584	do	813	Do.
8585	do	857	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26667 Filed 11-25-86; 8:45 am]

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Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued November 20, 1986

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filling requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On September 2, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 30 leases were issued as a result of OCS Sale 94 for the Eastern Gulf of Mexico on December 18, 1985. Notice of these determinations was issued by the Commission on September 12, 1986. On October 28, 1986, MMS notified the Commission that eight additional leases have been granted under this same sale. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA secton 102:

Lease No. OCS-G	Area	Block	Effective date
8361	FMG	411	Aug. 1, 1986.
8362	do	412	Do.
8363	do	455	Do.
8364	do	456	Do.
8365	do	499	Do.
8366	do	500	Do.
8367	do	543	Do.
8368	do	587	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26668 Filed 11-25-86; 8:45 am]

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Notice of Determinations Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

Issued November 20, 1986.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NCPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the revised procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. The determination is subject to Commission review in the same manner as other jurisdictional agency determinations.

On October 29, 1986, the Commission received notice from MMS, Gulf of Mexico OCS Region, that 101 leases were issued as a result of OCS Sale 104 for the Central Gulf of Mexico on April 30, 1986. Gas produced from the following leases has been determined to be gas produced from a new OCS lease under NGPA section 102:

Lease No. OCS-G	Area	Block	Effective date
8400	West Cameron	26	June 1, 1986.
8401	do	55F	July 1, 1986.
8402	do	141	June 1, 1986.
8403	do	142	July 1, 1986.
8404	do	208	June 1, 1986.
8405	West Cameron, West	304	July 1, 1986.
8406	do	314	Do.
8407	do	315	Do.
8408	do	402	June 1, 1986.
8509	West Cameron, West	472	Do.
8410	do	585	July 1, 1986.
8411	do	599	Do.
8412	do	610	Do.
8413	East Cameron	14G	Do.
8414	do	51	Do.
8416	do	149	June 1, 1986.
8417	do	188	July 1, 1986.
8418	do	189	Do.
8420	East Cameron, South	364	Do.
8421	Vermilion	43	Do.
8423	do	196	Do.
8424	do	207	Do.
8426	Vermilion, South	274	Do.
8427	do	341	June 1, 1986.
8428	do	279	Do.
8431	South Marsh Island, South	111	July 1, 1986.
8432	Eugene Island	49	June 1, 1986.
8433	do	179	July 1, 1986.
8434	do	190	Do.
8435	do	232	June 1, 1986.
8436	do	234	Do.
8437	do	235	Do.
8438	do	241	Do.
8439	Eugene Island, South	317	July 1, 1986.
8441	Ship Shoal	117	Do.
8442	do	118	Do.
8443	South Timbalier	75	Do.
8444	do	84	Do.
8445	South Timbalier, South	270	Do.
8446	do	274	Do.
8448	do	279	June 1, 1986.
8449	do	303	July 1, 1986.
8450	do	304	Do.
8451	do	306	Do.
8452	Grand Isle, South	104	Do.
8453	do	110	Do.
8454	West Delta	36G	Do.
8455	do	78F	June 1, 1986.
8456	do	78G	Do.
8457	do	97	Do.
8458	West Delta, South	121	July 1, 1986.
8459	do	122	Do.
8460	Main Pass	44	Do.
8461	do	59	Do.
8462	Main Pass, South & East	206	June 1, 1986.
8463	do	240	July 1, 1986.
8465	do	275	Do.
8467	do	315	Do.
8469	Viosca Knoll	871	June 1, 1986.
8470	do	872	Do.
8471	do	873	Do.
8472	do	916	Do.
8473	do	917	Do.
8474	do	955	Do.
8475	do	957	Do.
8476	do	983	July 1, 1986.
8478	Ewing Bank	783	Do.
8479	do	827	Do.
8480	do	870	Do.
8481	do	957	Do.
8483	Mississippi Canyon	72	June 1, 1986.
8484	do	84	Do.
8485	do	128	Do.
8486	do	208	Do.
8487	do	252	Do.
8488	do	504	Do.
8489	do	538	Do.
8490	do	539	Do.
8491	do	582	Do.
8492	do	583	Do.
8493	do	612	Do.
8494	do	613	Do.

Lease No. OCS-G	Area	Block	Effective date
8495	do	656	Do.
8496	do	657	Do.
8497	do	673	Do.
8498	do	674	Do.
8499	do	717	Do.
8500	Green Canyon	55	July 1, 1986.
8501	do	120	June 1, 1986.
8502	do	122	Do.
8503	do	168	Do.
8504	do	209	Do.
8505	Atwater Valley	387	Do.
8506	do	388	Do.
8507	do	427	Do.
8508	do	428	Do.
8509	do	429	Do.
8510	do	430	Do.
8511	do	431	Do.
8512	do	471	Do.
8513	do	472	Do.

The complete list of OCS leases submitted by the MMS for this sale, with area and block descriptions, is available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, DC. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within twenty days after this notice is issued by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26669 Filed 11-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-57-000, et al.]

Natural Gas Certificate Filings; Florida Gas Transmission Co. et al.

November 21, 1986.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP87-57-000]

Take notice that on November 6, 1986, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP87-57-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas for Monsanto Chemical Company (Monsanto) and to construct and operate certain facilities necessary for the delivery of such gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT proposes to transport, on an interruptible basis, up to 15 billion Btu equivalent per day for the account of Monsanto for ultimate use in Monsanto's plant located in Pensacola, Escambia County, Florida. It is stated that Monsanto would purchase such gas from Enron Gas Marketing, Inc. FGT states that the gas would be received at the following points of receipt:

(1) Existing point of interconnection between FGT and Houston Pipe Line Company (HPL) near Sinton in San Patricio County, Texas (Sinton); or

(2) Existing point of interconnection between FGT and HPL near Magnet Withers in Matagorda County, Texas (Magnet Withers); or

(3) Existing point of interconnection between FGT and HPL in Orange County, Texas (Orange); or

(4) Existing point of interconnection between FGT and Acadian Gas Pipeline System in West Baton Rouge Parish, Louisiana (Acadian).

FGT states that gas may be tendered by Monsanto during a day at any one, but only one, of the above-listed points of receipt. FGT proposes to redeliver the gas for the account of Monsanto at a proposed point of interconnection with Five Flags Pipeline Company (Five Flags) in Santa Rosa County, Florida. FGT proposes to install an 8-inch meter station, quality measuring equipment, and certain related appurtenances at an estimated cost of $140,000 in order to make the interconnection with Five Flags.

FGT proposes to charge a maximum transportation rate which would consist of the sum of a facility charge, a service charge, other charges, and the Gas Research Institute surcharge. It is stated that the facility charge is 12.6 cents per MMBTu equivalent delivered to Five Flags for Mansanto's account and that the service charge is 4.0 cents per MMBTu equivalent per 100 miles of forward haul. FGT states the proposed service charge as follows:

Point or receipt	Service charge per MMBTu equivalent
1. Sinton	27.3 cents.
2. Magnet Withers	22.2 cents.
3. Orange	16.8 cents.
4. Acadian	10.4 cents.

FGT states that because Monsanto can elect to receive gas through other interstate and instrastate pipelines, FGT is requesting authorization to charge Monsanto a rate lower than the otherwise applicable rate, but not less than the minimum transportation rate of 6.9 cents per MMBTu equivalent delivered to Five Flags.

FGT states that the term of the transportation agreement is for a period of five years, and from year to year thereafter.

Additionally, FGT states that upstream transportation services would be provided by HPL and Acadian pursuant to Section 311 of the Natural Gas Policy Act, and that downstream transportation service would be provided by Five Flags pursuant to Section 311.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. National Fuel Gas Supply Corporation

[Docket No. CP87-59-000]

Take notice that on November 7, 1986, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87-57-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the interruptible transportation of up to 50,000 Mcf of natural gas per day for National Fuel Gas Distribution Corporation (Distribution) and up to 30 Mcf of natural gas per day for Pine-Roe Natural Gas Company (Pine-Roe) for use as general system supply, for a term ending December 31, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that it would receive the subject gas for Distribution at existing receipt points and redeliver equivalent volumes at existing delivery points. With regard to Pine-Roe, National states that the volumes will be delivered to National by Columbia Gas Transmission Company at an existing interconnection of their facilities known as East Fork for transportation and delivery to Pine-Roe through an existing tap on National's T-9 Line in Clarion County, Pennsylvania. National adds that Pine-Roe is a small distributor serving a predominately residential, temperature sensitive market in the

vicinity of Clarion, Pennsylvania. National explains that Pine-Roe does not have sufficient supplies to meet its winter season needs and has in the past made emergency purchases of gas from National in order to meet its requirements.

National further states that it will provide these services pursuant to its existing Rate Schedule T–1 which provides for a rate of 26.82 cents per Mcf of gas and 2 percent shrinkage. It is explained that the rate and the treatment of revenues under this proposal would be subject to the outcome of National's current rate filing pending at Docket No. RP86–136–000.

Comment date December 12, 1986 in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP87–54–000]

Take notice that on November 5, 1986, Northwest Pipeline Corporation (Applicant) 295 Chipeta Way, Salt Lake City, Utah 84208, filed in Docket No. CP87–54–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas liquifaction service for Southwest Gas Corporation (Southwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a LS–1 service agreement dated December 7, 1977, between Applicant and Southwest, it liquefies, stores, vaporizes and delivers up to a storage demand volume of 12,000 dt equivalent of natural gas per day and a storage volume of 43,400 dt equivalent of natural gas at its LNG plant located near Plymonth, Washington. It is stated that Southwest, by letter agreement, dated October 21, 1986, agreed to cancel the LS–1 service agreement, to be effective the later of the date of the Commission order granting the requested abandonment or the day after the date upon which Southwest has reduced its inventory to zero.

It is stated that the agreement to cancel is the result of a letter agreement, dated June 12, 1986, between Applicant and the Public Service Commission of Nevada (PSCN), whereby PSCN agreed to and has withdrawn (1) its appeal before the U.S. Court of Appeals for the District of Columbia, Case Number 85–1744, and (2) its opposition to offer of settlement in Docket Nos. RP85–13–000 and RP86–65–000, approved by Commission order, issued October 23, 1986.

It is further stated that Applicant assumes that Southwest would continue to assure its customers adequate levels of natural gas service and that there would be no immediate impact on Rate Schedule LS–1 to Applicant's other customers.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Overthrust Pipeline Company

[Docket No. CP87–56–000]

Take notice that on November 6, 1986, Overthrust Pipeline Company (Overthrust), 79 South State Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP87–56–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited term authorization for the continuation of interruptible transportation service on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), for a period of two years, commencing on December 11, 1986, or until such time as the Commission issues an order in Overthrust's pending application in Docket No. CP83–70–000. Additionally, Overthrust requests pre-granted abandonment authority upon the issuance and acceptance of a permanent certificate in Docket No. CP83–70–000 to provide long-term transportation service for Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Overthrust states that its request for a limited-term certificate, with pre-granted abandonment authority, would allow it to continue to render service for Tennessee while the Commission continues its consideration of Overthrust's application in Docket No. CP83–70–000 and the competitive applications, filed by various interstate pipeline companies, to provide downstream service for Tennessee. Overthrust explains that unless the Commission grants this limited-term application, service for Tennessee would be terminated on December 11, 1986.

Overthrust proposes to charge its existing Rate Schedule I Overrun rate for interruptible transportation service provided to Tennessee under the limited-term certificate and any temporary authority. Overthrust explains that its Rate Schedule I rate is the same rate that Tennessee currently pays for interruptible transportation service and that Overthrust proposes no change to the character or amount of service presently provided for Tennessee. It is further stated that the rate charged to Tennessee is subject to the outcome of Overthrust's rate proceeding in Docket No. RP85–60–000.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Pacific Gas Transmission Company

[Docket No. CP87–66–000]

Take notice that on November 12, 1986, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94101–1570, filed in Docket No. CP87–66–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to PGT at Kingsgate, British Columbia, of up to 30,000 Mcf of natural gas per day for the account of Bonus Energy, Inc. (Bonus), and the redelivery of such natural gas to Bonus at a point of interconnection between the pepeline systems of PGT and Pacific Gas and Electric Company at Malin, Oregon. PGT states that the interruptible transportation service would be accomplished through the utlization of existing capacity available on PGT's system. It is also stated that the term of the agreement would be for a primary term of ninety days, not to exceed one year.

PGT further requests pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: December 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person

wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26666 Filed 11-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-60-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Indeck Energy Services, Inc., et al.

November 21, 1986.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Indeck Energy Services, Inc.

[Docket No. QF87-60-000]

On November 3, 1986, Indeck Energy Services, Inc. (Applicant), of 1111 South Willis Avenue, Wheeling, Illinois 60090, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Otsego, Michigan and will consist of one or two steam generators and a steam turbine generator. Steam recovered from the facility will be used in paper production process. The maximum electric power production capacity of the facility will be 60 MW. The primary source of energy will be coal. Installation of the facility will begin April 1987.

2. Ogden Haverhill Associates

[Docket No. QF87-58-000]

On November 3, 1986, Ogden Haverhill Associates (Applicant), of 140 East Ridgewood Avenue, Paramus, New Jersey 07652, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Haverhill, Massachusetts and will consist of two mass-burn steam generators and one steam turbine generator. The electric power production capacity of the facility will be 43 MW. The primary source of energy will be municipal solid waste.

3. Solar Turbines Incorporated

[Docket No. QF87-71-000]

On November 5, 1986, Solar Turbines Incorporated (Applicant), of 2200 Pacific Highway, San Diego, California 92138-5376 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the site of Caterpillar Incorporated, in York, Pennsylvania. The facility will consist of six combustion turbine generators, heat recovery steam generators and two extraction/condensing steam turbine generators. Steam extracted from the turbines will be utilized for process by the Caterpillar Incorporated Plant. The net electric power production capacity of the facility will be approximately 69 MW. The primary energy source for the facility will be natural gas with #2 fuel oil as back-up. Installation of the facility will begin approximately in February of 1987.

4. Texaco Producing, Inc.

[Docket No. QF87-46-000]

On October 28, 1986, Texaco Producing, Inc. (Applicant), of P.O. Box 10269, Bakersfield, California 93389-0269, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California and will consist of a combustion turbine generator and a heat recovery steam generator. Steam recovered from the facility will be used for enhanced oil recovery techniques. The electric power production capacity of the facility will be 33 MW. The cogeneration facility is scheduled to begin operation on January 1, 1989.

5. Wormser Engineering, Inc.

[Docket No. QF87-72-000]

On November 5, 1986, Wormser Engineering, Inc. (Applicant), of 225 Merrimac Street, Woburn, Massachusetts 01801, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the Alpha Industrial Center in Alpha, New Jersey. The facility will consist of a fluidized-bed boiler and a steam turbine generating unit. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm.

6. Wormser Engineering, Inc.

[Docket No. QF87-76-000]

On November 7, 1986, Wormser Engineering, Inc. (Applicant), of 225 Merrimac Street, Woburn, Massachusetts 01801, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Rockaway, New Jersey. The facility will consist of a fluidized-bed boiler and a steam turbine generating unit. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm.

7. Wormser Engineering, Inc.

[Docket No. QF87-77-000]

On November 7, 1986, Wormser Engineering, Inc. (Applicant), of 225 Merrimac Street, Woburn, Massachusetts 01801, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations No

determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Roxbury, New Jersey. The facility will consist of a fluidized-bed boiler and a steam turbine generating unit. The net electric power production capacity of the facility will be 80 MW. The primary energy source will be anthracite culm.

Standard paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26670 Filed 11-25-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-58-000 et al.]

Natural Gas Certificate Filings; Transcontinental Gas Pipeline Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipeline Corp.

[Docket No. CP87-58-000]

November 18, 1986.

Take notice that on November 6, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87-58-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Diamond Shamrock Offshore Partners Limited Partnership (Diamonnd Shamrock), a producer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 1,000 Mcf per day of natural gas on an interruptible basis for Diamond Shamrock for a term of two years and year to year thereafter. It is stated that Diamond Shamrock is the producer of oil and gas in Vermilion area block 37, offshore Louisiana (Vermilion 37). It is further stated that in recent years, gas produced in Vermilion 37 was used in gas lift operations to maintain oil production in the block. It is explained that in November 1985, oil production was shut in due to the depletion of the remaining gas reserves in Vermilion 37. It is indicated that in connection with the shut-in operations in Vermilion 37, Diamond Shamrock has a suspension of production authorization from the Minerals Management Service of the U.S. Department of the Interior which will expire November 30, 1986. In order to avoid a possible loss of lease in Vermilion 37, Transco states that Diamond Shamrock has requested it to transport gas which Diamond Shamrock produces in Vermilion area block 57 (Vermilion 57). Such gas, it is indicated, would be used to resume gas lift operations in Vermilion 37, and thus, the production of oil.

It is stated that Columbia Gulf Transmission Company would also provide transportation of such gas, pursuant to its Order No. 436 blanket certificate. Columbia Gulf would receive the gas in Vermilion 57 and transport it to an interconnection with Transco at the Acadia gas plant in Terrebonne Parish, Louisiana. Transco would then deliver the gas by backhaul from the Acadia plant to Vermilion 37. Transco notes that Diamond Shamrock has requested that it seek a certificate approval by November 30, 1986, to avoid the possibility of the loss of its lease.

Transco proposes to impose certain "use or lose" conditions on the transportation service for Diamond Shamrock. It is stated that such conditions are consistent with the "use or lose" provisions being imposed on transitional NGPA section 311 services currently being rendered by Transco. Transco further proposes that the section 7(c) authority requested for the subject service cover any future identical service which Transco performs for Diamond Shamrock in the event a termination of the initial service occurs which is related to the use or lose provisions.

Comment date: December 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co. vs. Pacific Gas and Electric Co. and Southern California Gas Co.

[Docket No CP87-44-000]

November 19, 1986.

Take notice that on October 24, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-44-000 pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, a complaint that Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal) and/or affiliates thereof, are or may be pursuing a course of conduct which contravenes El Paso's presently effective service agreements, certificates of public convenience and necessity authorizing service pursuant to such service agreements, and El Paso's FERC Gas Tariff, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Specifically, El Paso avers that PG&E and SoCal are engaging or will be engaging in the transportation by displacement of Candian volumes of gas which utilized the El Paso pipeline system without the proper authorization. El Paso requests that the Commission issues an order (1) directing the PG&E and SoCal to cease and desist from engaging in the subject transportatior transactions unless and until a transportation agreement with El Paso has been executed providing for such service, and, (2) requiring payment of El Paso's applicable tariff rate for any past service in violation of service agreements, certificates and tariff. In the alternative, El Paso requests that the Commission issue an order declaring that the subject transportation arrangements are not currently authorized and any future transportation of this nature would require prior execution of an appropriate transportation service agreement.

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, PG&E and SoCal are to respond within 20 days from the date of this notice.

Comment date: December 9, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Co., of America

[Docket No. CP87-45-000]

November 20, 1986.

Take notice that on October 30, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket

No. CP87–45–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural: (1) To transport on an interruptible basis natural gas volumes from an existing receipt point in Wharton County, Texas, to existing delivery points in Cameron and Vermilion Parishes, Louisiana, Montgomery County, Texas, and to a proposed delivery point in Cameron Parish, Louisiana, and (2) to construct certain minor facilities at the proposed delivery point requried for such transportation service, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural states that it has entered into a gas transportation agreement with Columbia Gas Transmission Corporation (Columbia) to provide on an interruptible basis transportation of up to a maximum of 150 billion Btu equivalent of gas per day for Columbia for a primary term of two years.

Natural also states that it proposes to charge Columbia a transportation rate consistent with its Rate Schedule TRT–1 maximum rate levels effective July 1, 1986. Natural further proposes to charge Columbia the currently effective GRI surcharge, if required.

Natural; proposes to construct an 8-inch tap connection and appurtenant facilities near Chalkley in Cameron Parish, Louisiana, at an estimated cost of $78,000. Initial financing of these facilities would be from funds on hand.

Natural also requests authorization to add and delete receipt points as required to support the transportation service. The construction of such receipt points added to implement the arrangement would be done under Natural's blanket construction authorization in Docket No. CP82–402–000, it is stated.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corp.

[Docket No. CP87–53–000]

November 20, 1986.

Take notice that on November 5, 1986, Northwest Pipeline Corporation (Applicant) 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–53–000, an application pursuant to section 7(c) of the Natural Gas Act for authorization for a limited-term transportation of natural gas in interstate commerce for the account of Cascade Natural Gas Company (Cascade), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant proposes to transport up to 150 billion Btu equivalent of natural gas per day, on an interruptible basis, for the account of Cascade, terminating on October 31, 1989, pursuant to a gas transportation agreement dated October 17, 1986, which provides for transportation under Rate Schedules T–4 and T–5 of Northwest's FERC Gas Tariff, Volume No. 1–A.

Applicant states that Cascade has procured supplies of natural gas which it would deliver to Applicant's at various existing receipt points on Applicant's transmission system for ultimate delivery by Cascade to various end-users.

It is further stated that Applicant proposes to transport Cascade's gas through its transmission system and redeliver thermally equivalent volumes, less transmission fuel, to Cascade at certain existing sales meter stations in Oregon and Washington

It is asserted that Cascade would subsequently deliver this gas to certain specified end-users on its distribution system.

Applicant explains that it would charge Cascade for all volumes of gas transported and delivered under the transportation agreement at either the interruptible, incremental on-system transportation rate or the interruptible, replacement on-system transportation rate as set forth, respectively, in Applicant's Rate Schedules T–4 and T–5, FERC Gas Tariff, Volume No. 1–A. The T–4 transportation rate would apply to volumes transported during any month which are incremental to the corresponding 1984 monthly volumes for the endusers as indicated in Exhibit C of the application, it is stated. As set forth on Sheets 201 and 202 of Applicant's Volume No. 1–A Tariff, the currently effective T–4 transportation rate is 20.00 cents per million Btu equivalent, plus a GRI charge of 1.31 cents per million Btu equivalent, a fuel reimbursement charge and the currently T–5 transportation rate which is 37.97 cents per million Btu equivalent, plus a 1.31 cents per million Btu equivalent charge, a fuel reimbursement charge, and, if applicable, a take-or-pay cost reimbursement fee of 24.0 cents per million Btu equivalent and/or a gathering payment credit of 30.91 cents per million Btu equivalent, it is stated.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Co.

[Docket No. CP87–52–000]

November 20, 1986.

Take notice that on November 4, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–52–000 an application pursuant to section 7(c) of the Natural Gas Act, for a limited-term certificate of public convenience and necessity as set forth in the application which is on file with the Commission and open to public inspection.

Southern requests limited-term certificates of public convenience and necessity authorizing it to transport gas on behalf of Jim Walter Metals, a Division of the Georgia Marble Company, a wholly owned subsidiary of Jim Walter Corporation (JWM) in accordance with the terms and conditions of a transportation agreement between JWM and Southern dated August 11, 1986, as amended October 6, 1986 (JWM Agreement), and on behalf of Masonite Corporation (Masonite) in accordance with the terms and conditions of a transportation agreement between Masonite and Southern dated October 22, 1986 (Masonite Agreement). Subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport on an interruptible basis up to 1.2 billion Btu equivalent of natural gas per day purchased by JWM from SNG Trading Inc. and Yankee Resources, Inc. for use at its plant in Mt. Holly, South Carolina, and up to 1.5 billion Btu equivalent of natural gas per day that Masonite has arranged to purchase from SNG Trading Inc. for use at Masonite's plant in Marion County, South Carolina. Southern requests that the Commission issue the limited-term certificates for terms expiring one (1) year from the date of the Commission's order issuing the requested authorization.

Southern states that the JWM and Masonite Agreements provide that JWM and Masonite will cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline systen specified in Exhibit A to the Agreement. Southern asserts that pursuant to the JWM and Masonite Agreements, Southern will redeliver to South Carolina Pipeline Corporation (South Carolina) for JWM's and Masonite's respective accounts, at the Aiken Meter Station, Aiken, South Carolina, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas

(including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less JWM's and Masonite's pro-rata share of any gas delivered for their respective accounts which is lost or vented for any reason.

Southern states that JWM and Masonite have agreed to pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Carolina do not exceed the daily contract demand of South Carolina, the transportation rate shall be 48.2¢ per MMBtu; and

Where the aggregate of the volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Carolina exceed the daily contract demand of South Carolina, the transportation rate for the excess volumes shall be 77.6¢ per MMBtu. Southern asserts that it will collect from JWM and Masonite the GRI surcharge of 1.35¢ per Mcf on any such other GRI funding unit or surcharge as hereafter prescribed.

Southern states that the transportation arrangement will enable JWM and Masonite to diversify their natural gas supply sources and to obtain gas at competitive prices. In addition, Southern avers that it will obtain take-or-pay relief on all volumes transported pursuant to the JWM and Masonite Agreements.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Co.

[Docket No. CP86-392-002]

November 20, 1986.

Take notice that on October 30, 1986, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-392-002 a petition to amend the orders granting the limited-term certificate pursuant to section 7(c) of the Natural Gas Act in Docket Nos. CP86-392-000 and CP86-392-001, so as to authorize an increase of gas quantities being transported for The Southeast Alabama Gas District (Southeast Alabama), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Southern requests that the Commission amend the certificate authorization to authorize Southern to transport up to 37 billion Btu equivalent of natural gas per day for Southeast Alabama, in accordance with the terms and conditions of the March 7, 1986, transportation agreement as amended by an August 1, 1986, letter agreement.

It is stated that by orders issuing certificate authorizations in Docket Nos. CP86-392-000 and CP86-392-001 on June 13, 1986, and September 11, 1986, respectively, for a limited term expiring on June 13, 1987, the Commission authorized Southern to transport up to 7 billion Btu equivalent of natural gas per day on an interruptible basis on behalf of Southeast Alabama under the terms and conditions set forth in the transportation agreement dated March 7, 1986. It is further stated that Southern's certificate authorizes Southern to receive gas for transportation at various existing points of delivery on Southern's contiguous pipeline system specified in Exhibit A to the agreement and to redeliver the gas to Southeast Alabama at the Southeast Alabama Gas District Meter Station in Elmore County, Alabama, and at the Highway 169 Gate Meter Station in Les County, Alabama. Southern advises that Southeast Alabama purchases the transported gas from SNR Trading Inc., and uses it to supply certain of Southeast Alabama's industrial customers who have the installed capacity to utilize fuel oil.

Southern states that Southeast Alabama has informed Southern that other industrial end-use customers which it supplies have switched, or have indicated that they will switch, to fuel oil for substantially all of their energy requirements. Southern explains that Southeast Alabama has arranged to obtain additional sources of supply of natural gas in order to be able to offer natural gas to these customers at a price that is competitive with fuel oil and to meet the requirements of its other customers. It is further explained that, in order to provide for transportation of these additional volumes, Southern and Southeast Alabama have entered into the August 1, 1986, amendment to the transportation agreement to provide for the transportation of up to 37 billion Btu equivalent of gas per day. Southern states that in all other respects the transportation service will remain the same.

Comment date: December 11, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87-47-000]

November 20, 1986.

Take notice that on October 31, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-47-000 an application pursuant to section 7(c) of the Natural Gas Act so as to authorize an interruptible transportation service for Kerr-McGee Corporation (Kerr-McGee), acting on its own behalf and on behalf of Kerr-McGee Federal Limited Partnership I-1981 and Samedan Oil Corporation (Samedan), acting on its own behalf and on behalf of New England Energy Incorporated, collectively referred to herein as Producers, pursuant to the terms of a gas transportation agreement between Applicant and Kerr-McGee dated October 30, 1986, and between Applicant and Samedan dated October 30, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the gas to be transported by Applicant is produced by Kerr-McGee and Samedan from reserves located in High Island Blocks 21, 22, and 34, offshore Texas. Applicant states that pursuant to the terms and conditions of gas transportation agreements with each of the Producers it would receive up to 120,000 dt equivalent of natural gas per day for the account of each producer at the existing point of interconnection between the facilities of Applicant and the Producers on the High Island Block 22 platform, offshore Texas. Applicant would then transport and deliver thermally equivalent quantities of gas (less quantities retained for Applicant's fuel and uses and gas lost and unaccounted for and the plant thermal reduction due to processing), it is stated, for the account of each Producer at the following points of delivery:

(1) To Texas Eastern Transmission Company at Applicant's Meter No. 2-0375 located in Allen Parish, Louisiana

(2) To Texas Gas Transmission Company at Applicant's Meter No. 2-8002 located in Acadia Parish, Louisiana.

(3) To Columbia Gulf Transmission Company at Applicant's Meter No. 1-1034 in Acadia Parish, Louisiana.

(4) To ANR Pipeline Company at a point on Applicant's system near MP831-1+8.31 in LaSalle Parish, Louisiana.

(5) To Natural Gas Pipeline Company of America at Applicant's Meter No. 1–1717 in Cameron Parish, Louisiana.

(6) To Transcontinental Gas Pipeline Corporation (Transco) at Applicant's Meter No. 2–0373 located in Allen Parish, Louisiana.

(7) To Transco at Applicant's Meter No. 2–0291 in Jasper County, Mississippi.

(8) To United Gas Pipe Line Corporation (United) at Applicant's Meter No. 2–0391 in Jefferson Davis Parish, Louisiana.

(9) To United at Applicant's Meter No. 2–0533 in Ouachita Parish, Louisiana.

Applicant states that the interstate pipelines to whom the gas is delivered for the account of Producers would transport the gas for Producers under Order No. 436 transportation arrangements. The gas would then be sold to spot markets off the Order No. 436 pipelines, it is stated.

Applicant proposes to charge for this transportation service an offshore laterals charge of 10.6 cents per dt equivalent of gas transported from the point of receipt in High Island Block 22 to the central gathering platform in Sabine Pass Block 18 (Sabine Pass 18), offshore Louisiana. For transportation of the gas from Sabine Pass 18 to the applicable point of delivery, Applicant proposes to collect a quantity charge equal to the applicable cost-based rate multiplied by the total quantity of gas delivered by Applicant for the account of Producers at each delivery point. Applicant would also retain from the quantities received for transportation a quantity of gas necessary to meet its system fuel and use requriements.

Applicant states that it would also transport the liquid and liquefiable hydrocarbons associated with the natural gas tendered for transportation.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Texas Eastern Transmission Corp.

[Docket No. CP87–51–000]

November 20, 1986.

Take notice that on November 3, 1986, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87–51–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a portion of the sales service it provides the City of Batesville, Indiana (Batesville) under Texas Eastern's Rate Schedule SGS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests authorization to reduce its sales obligations to Batesville to a maximum daily quantity (MDQ) of 4.449 dekatherms (dt) equivalent of natural gas and an Annual Contract Quantity (ACQ) of 1,623,885 dt of natural gas, which quantities reflect a reduction of 360 dt and 131,400 dt of natural gas in the MDQ and ACQ, respectively, currently provided under the existing SGS service agreement dated February 19, 1986, between Texas Eastern and Batesville. Texas Eastern states that such reductions in the MDQ and ACQ are equivalent to and represent the incremental volumes which Texas Eastern was authorized to sell to Batesville under Rate Schedule SGS by the Commission's order issued on August 15, 1985, in Docket No. CP84–429–000, *et al.*

Texas Eastern states that it is filing the application for partial abandonment in acquiescence to Batesville's expressed desire to give up the incremental sales quantities approved in Docket No. CP84–429–000, *et al.*

Further, Texas Eastern states that it does not propose to abandon any facilities in connection with its proposed partial abandonment of service to Batesville. All facilities currently utilized to render service to Batesville would remain in place to make deliveries at the reduced levels.

Comment date: December 11, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Co.

[Docket No. CP87–55–000]

November 20, 1986.

Take notice that on November 5, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–55–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales service under the blanket authorization issued in Docket No. CP82–430–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United requests authority to abandon certain industrial sales services as follows:

Customer	Contract expiration date
Georgia Sugar Refinery	01/01/87
St. Charles Grain Elevator	01/01/87
Tenneco Oil Co.	01/01/87
Corhart Refractories (Corning Glass)	01/01/87
Westvaco Corp.	01/01/87
BHP Petroleum	01/01/87
Ideal Cement Co.	01/01/87
Parade Co.	01/01/87
Loyce and Jack Phillips	01/01/87

United states that the sales contracts have expired or will expire in the near future and that the proposed abandonments have been agreed to by the affected industrial customers. United further states that its facilities will remain in place in anticipation of future service.

Comment date: January 5, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of

the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26615 Filed 11-25-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for refunding to adversely affected parties $76,330.45 obtained as a result of consent orders which the DOE entered into with the following firms:

O'Connell Oil Company of Pittsfield, Massachusetts.

Key Oil Company of Franklin, Kentucky.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of either the O'Connell or the Key consent order fund must be filed in duplicate within 90 days of publication of this notice the the **Federal Register.** Applications should refer to the appropriate case number, HEF-0141 for O'Connell, and HEF-0106 for Key. Address applications to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision explains the procedures that the DOE has formulated to distribute to adversely affected parties the $76,330.45, plus accrued interest, that the DOE obtained under the terms of consent orders entered into with O'Connell Oil Company and Key Oil Company. O'Connell and Key provided these funds to settle all claims and disputes with the DOE regarding the manner in which each applied the federal price regulations to its sales of motor gasoline and diesel fuel, respectively. The O'Connell consent order covered the firm's motor gasoline sales between April 1, 1979, and April 30, 1980; the Key consent order covered the firm's diesel fuel sales between November 1, 1973, and March 31, 1974. Firms or individuals that purchased motor gasoline from O'Connell or diesel fuel from Key during these time periods may be eligible to receive a portion of the consent order funds

The DOE solicited comments concerning distribution of the consent order funds in two Proposed Decision and Orders, one for the O'Connell case issued on December 13, 1985, and one for the Key case issued on March 11, 1986. 50 FR 51919 (December 20, 1985); 51 FR 9262 (March 18, 1986). Following this, the DOE determined the final refund application procedures. As the Decision explains, the DOE audit of Key identified eight first purchasers who may be eligible for a refund. To receive a refund, these firms must submit either a schedule of their monthly purchases for Key, or a statement verifying that they purchased diesel fuel from Key and are willing to rely on the data in the audit files to document their claim. The Decision also describes the process by which purchasers not identified in the DOE audits may apply for refunds. These unidentified purchasers must submit monthly schedules of their diesel fuel purchases from Key or their motor gasoline purchases from O'Connell, and proof that they were injured by the consent order firm's alleged pricing violations. The Decision also specifies that retailers of O'Connell motor gasoline that claim refunds in excess of the $5,000 small claims threshold will be subject to different requirements for proving injury than those required of other large reseller and retailer applicants in the O'Connell and Key proceedings. Applicants claiming $5,000 or less need only document their purchase volumes.

The specific information required in an Application for Refund is set forth in the Decision and Order. Applications will be reviewed provided they are filed within 90 days of the publication of this Decision and Order in the **Federal Register.**

Dated: November 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: O'Connell Oil Company, Key Oil Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0141, HEF-0106.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with O'Connell Oil Company (O'Connell), and Key Oil Company (Key). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to these consent orders.

I. Background

Both O'Connell and Key are "reseller-retailers" of "refined petroleum products" as those terms were defined in 10 CFR 212.31. O'Connell is located in Pittsfield, Massachusetts, and Key is located in Franklin, Kentucky. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit of O'Connell indicated that during the period April 1, 1979 through April 30, 1980, O'Connell committed possible pricing violations amounting to $9,361.13 with respect to its sales of motor gasoline. Similarly, ERA's audit of Key's records, which resulted in a Proposed Remedial Order (PRO) issued on March 20, 1981, alleged that Key committed certain pricing violations with respect to its sales of diesel fuel during the period November 1, 1973 through March 31, 1974.

Subsequently, O'Connell and Key entered into separate consent orders with the DOE in order to settle their disputes with the DOE concerning their sales of motor gasoline and diesel fuel.

respectively. Each consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent orders also state that the firms do not admit that they violated the regulations. On September 4, 1981, pursuant to the terms of the O'Connell consent order, O'Connell deposited $9,361.13 into an interest-bearing escrow account for ultimate distribution by the DOE.[1] Similarly, on September 21, 1983, Key completed the payments required of its settlement. The consent order required Key to remit $58,730; however, including installment interest, Key's total deposit amounted to $66,969.32, which we will consider to be the principal amount.[2]

II. Jurisdiction and Authority To Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

The OHA issued a Proposed Decision and Order (PD&O) in the O'Connell proceeding on December 13, 1985, 50 FR 51919 (December 20, 1985), and in the Key proceeding on March 11, 1986, 51 FR 9262 (March 18, 1986). In order to give notice to all potentially affected parties, copies of the Proposed Decisions were published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&Os were mailed to purchases who were identified in the separate audit files and for whom addresses were available. Copies were also sent to various petroleum marketers' associations. While none of the consent order firms' customers submitted comments on the proposed procedures, comments were filed in the Key proceeding on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia. These comments concern the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the O'Connell and Key refund proceedings. In determining the manner of indirect restitution, we will act in accordance with the provisions of the recently enacted Petroleum Overcharges Distribution and Restitution Act of 1986. *See* H.R. 5300, Title III, 99th Cong., 2d Sess., Cong. Rec. H11319–21 (daily ed. October 17, 1986). Since no comments were received concerning first-stage procedures, we will employ the procedures suggested in the PD&Os. However, in both cases we will modify our calculation of the proposed volumetric factor.

We will provide refunds to identifiable purchasers of O'Connell motor gasoline who may have been injured by O'Connell's pricing practices between April 1, 1979 and April 30, 1980, and to Key customers who may have suffered injury as a result of Key's pricing practices in its sales of diesel fuel during the period November 1, 1973 through March 31, 1974. Purchasers must file applications documenting their purchases in order to be eligible for a portion of the consent order funds.

III. Distribution of Refunds

As we proposed in the Key PD&O, we will rely in part on the information in the Key audit file to aid us in determining the identity of certain allegedly overcharged parties and the amount of alleged overcharges each party suffered. *See, e.g., Dalco Petroleum, Inc.*, 14 DOE ¶ 85,248 (1986). The rationale for this plan was fully explained in the Key PD&O, 51 FR 9262 at 9263. In addition to identifying certain customers and alleging overcharges to these parties, the Key audit alleged overcharges to other, unidentified customers. However, since it was impossible for ERA to assign overcharges to unidentified customers, we proposed using the volumetric allocation methodology to determine the proper refund amounts for these customers. In the case of O'Connell where no first purchasers were identified, we also proposed the use of a volumetric approach to distribute the funds in escrow. *See, e.g., Propane Gas and Appliance Company*, 14 DOE ¶ 85,244 (1986). Since there were no objections to our proposals for distributing the refund monies by these methods, we will adopt them for use in the present proceeding.

The eight first purchasers of Key diesel fuel identified in ERA's audit and the portion of the consent order fund which was allotted to each by ERA are listed in the Appendix. We will allot the remaining, $59,268 of the Key consent order fund to customers who are as yet unidentified. The entire O'Connell consent order fund will be allotted to as yet unidentified claimants. The procedures for distribution of funds to unidentified purchasers (*i.e.*, using the volumetric method) follows in Section IV, below.

IV. Demonstration of Injury

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit files provide, we will adopt two rebuttable presumptions as well as two findings, regarding injury. First, we will presume that purchasers of O'Connell motor gasoline or Key diesel fuel that are claiming small refunds ($5,000 or less) were injured by the alleged overcharges.[3] In the absence of compelling material, we will also adopt a presumption that spot purchasers of products from either firm were not injured. In addition, we make a finding that end users or ultimate consumers of O'Connell motor gasoline and Key diesel fuel whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. As proposed, end users, along with applicants filing claims at or below the $5,000 threshold, need only document their purchases to establish injury.[4] Nor will we require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased O'Connell motor gasoline or Key diesel fuel and passed the alleged overcharges associated with those products through to their end user customers or members. However, we will require such applicants to certify that they will pass any refund received through to their customers/members, to provide us with a full explanation of how they plan to

[1] As of October 31, 1986, the O'Connell escrow account contained $17,130.02, representing $9,361.13 in principal, and $7,768.89 in accrued interest. O'Connell had previously deposited funds into an escrow account pursuant to an earlier consent order regarding sales of motor gasoline during the period November 1, 1973 through March 31, 1974. Those sales and that escrow account are not involved in this Decision.

[2] As of October 31, 1986, the Key escrow account contained $96,234.63, representing $66,969.32 in principal and $29,265.31 in interest.

[3] All of the customers identified in the Key audit were assigned refund amounts below the $5,000 small claims threshold, and will therefore not be required to provide a detailed demonstration of injury.

[4] We recognize that individuals who purchased Key diesel fuel or motorists which purchase motor gasoline from O'Connell's company-operated, service stations may have difficulty documenting their purchases, especially those made so long ago. Therefore, if these purchasers no longer have purchase documentation, they may submit estimates of purchases accompanied by a detailed explanation of how these estimated purchases volumes were derived. This information might include the type and number of vehicles owned, the approximate number of miles driven, etc.

accomplish this restitution, and to notify the appropriate regulatory body or membership group of their receipt of any refund money. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the O'Connell and Key PD&Os. 50 FR 51919 at 51920–922 (December 20, 1985); 51 FR 9262 at 9263–264 (March 18, 1986). These presumptions and findings will permit claimants to apply for refunds without incurring prohibitively high expenses.

Unlike threshold claimants, a reseller or retailer which claims a refund in excess of $5,000 will be required to provide detailed documentation of its injury. While there are a variety of methods for making such a showing, we proposed that such a claimant be required to demonstrate (i) that it maintained a "bank" of unrecouped increased product costs throughout the regulatory period, and (ii) that market conditions would not permit it to pass on the increased costs to its customers in the form of higher selling prices.[5] Since there were no objections to the proposed demonstration of injury, we will adopt these requirements for resellers and retailers of Key diesel fuel, and resellers of O'Connell motor gasoline. As proposed, retailers of O'Connell motor gasoline will be subject to a different requirement for proving injury than that adopted above.[6] Retailers of O'Connell gasoline will not be required to submit cost bank data for the period following the discontinuation of the banking regulations for motor gasoline retailers, *i.e.*, after July 16, 1979; however, in order to qualify for a refund in excess of $5,000, they will be required to show that they maintained prices for motor gasoline at the same level as if overcharges had not occurred. To do so, a retailer may compare the prices it paid for O'Connell motor gasoline with the prices paid for motor gasoline by its competitors to show that market forces prevented it from recovering cost increases in the prices charged its own customers. *See Pacer Oil Company of Florida, Inc.*, 13 DOE ¶ 85,291 (1985).[7]

V. Calculation of Refund Amount

As previously stated, we will use the volumetric approach to distribute refund monies to the unidentified purchasers of Key diesel fuel and O'Connell motor gasoline. In the case of Key customers, we will use a straight volumetric approach. However, in the O'Connell proceeding we will modify the usual volumetric approach to fit the unique characteristics of that case.

Using a volumetric factor, a successful claimant's refund is determined by multiplying a factor, know as the volumetric refund amount, by the number of gallons of product purchased by the claimant. For claimants that purchased diesel fuel from Key during the period November 1, 1973 through March 31, 1974, but that were not identified by the ERA, the volumetric factor is $0.01413 per gallon.[8]

With regard to O'Connell, although the DOE's audit does not identify specific parties which may have been injured by the alleged overcharges, audit information does exist concerning the amount of consent order funds due O'Connell's wholesale and retail classes of customer. These records show that O'Connell sold fewer gallons at wholesale than retail, but that the wholesale transactions bore a greater proportion of the total amount of the alleged overcharges. As a result, in the audit file the ERA assigned a greater share of the settlement funds to wholesale purchasers. As previously stated, we will rely on this information to aid in the distribution of refunds, and we will therefore adopt the proposal to establish separate volumetric factors for O'Connell's wholesale and retail coustomers. We will also presume that within these two categories of customer, the alleged overcharges were distributed equally among all of the gallons of product sold.

O'Connell's wholesale and retail customers will be eligible to receive a refund equal to the number of gallons of motor gasoline purchased from O'Connell, multiplied by the appropriate volumetric factor. According to the consent order, $7,407.49 of the settlement funds should go to resellers and $1,953.64 to commercial end users and customers of company-owned service stations.[9] Based upon O'Connell's actual volume of gasoline sales to these customers, the volumetric factor for customers of company-owned service stations and commercial end users is $0.000402 per gallon, and the volumetric factor for wholesale dealer customers is $0.00437 per gallon.[10] Successful applicants in both cases will receive a proportionate share of the accrued interest.[11]

As in previous cases, only claims for at least $15 will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of

[5] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on November 1, 1973, and ending on June 30, 1976 for reseller-retailers of diesel fuel (that product's decontrol date), and on July 16, 1979 and May 1, 1980 for motor gasoline retailers and resellers, respectively. Under the original rules, a reseller or retailer of these refined petroleum products was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased product costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; FR 29546 (1980).

[6] This was proposed because, effective July 16, 1979, a motor gasoline retailer was required to calculate its MLSP under a fixed-margin approach. Unrecouped increased product costs could no longer be banked for later recovery. 10 CFR 212.93; 45 FR 29546 (1980).

[7] Resellers or retailers who claim a refund in excess of $5,000 but who do not attempt to establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[8] The Key volumetric has been slightly modified. The portion of the Key settlement fund that was assigned to identified purchasers by ERA should not be included in the calculation. Nor should the computation of the Key volumetric factor have included volumes purchased by identified claimants. *See* Beacon Oil Company, 14 DOE ¶ 85,509 (1986) (recalculation produced increased volumetric factor). Since the information available from ERA's audit did not provide sufficient information with which to determine a volumetric factor based solely on Key's sales to unidentified customers, the volumetric factor was recalculated by dividing the total settlement amount, $66,969, by the total 4,739,801 gallons of diesel fuel sold by Key to all purchasers during the consent order period.

[9] Since the service stations were owned by O'Connell, they are ineligible to claim the refunds allocated to them by ERA themselves, since such a refund would amount to returning consent order funds to O'Connell. However, customers which purchased motor gasoline from any of the following company-owned stations during the consent ordr period may file claims for those purchases. The stations are: East Street Amoco, Southstreet Amoco, Hinsdale Amoco, and Yellow Cab Service Station, all located in the Pittsfield, Massachusetts area.

[10] The volumetric factors have been revised from those estimated in the PD&O to reflect O'Connell's actual total sales volume during the consent order period, as supplied by the firm since the issuance of the PD&O. *See* Memorandum of telephone conversation between Mr. Solbin, O'Connell's Treasurer, and Sharon Dennis, OHA Staff Analyst. Using information available in the audit file we determined that commercial end users and company-owned service stations purchased 74.16 percent of O'Connell's total sales during the priod, or 4,865,225 gallons. We then divided this amount into the portion of consent order funds assigned retail purchasers by the ERA ($1,953.64) to obtain the volumetric factor of $0.000402 per gallon. Similarly, we divided the funds assigned O'Connell's wholesale dealer customers ($7,407.49) by O'Connell's wholesale sales volume, 1,695,218 gallons, to obtain the volumetric factor of $0.00437 per gallon.

[11] The volumetric presumption is rebuttable. A claimant which believes that it incurred a disproportionate share of the alleged overcharges within its class may submit evidence proving this claim. *See* Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co., 12 DOE ¶ 85,054 at 88,164 (1984).

restitution. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

VI. Applications for Refund

The procedures described above will allow us to distribute the O'Connell and Key consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms that purchased O'Connell motor gasoline during the period April 1, 1979 through April 30, 1980, or Key diesel fuel during the period November 1, 1973 through March 31, 1974. Eligible applicants include downstream customers as well as first purchasers. As we proposed, a portion of the Key consent order funds will be distributed to the firms listed in the Appendix who file applications for refund, provided they make any necessary demonstrations of injury. No addresses are available for those firms marked by an asterisk in the Appendix. In an attempt to locate those firms, we will provide Key and various petroleum dealers' associations with copies of the Decision and will publish a notice in the **Federal Register.** We will accept information regarding the identity and present location of these firms for a period of 90 days from the date of publication of this Decision and Order in the **Federal Register.**[12]

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of O'Connell motor gasoline or Key diesel fuel along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. An applicant listed in the Appendix may instead submit a statement verifying that it purchased Key diesel fuel and is willing to rely on the data in the audit file. If the applicant was a downstream purchaser it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by O'Connell or Key;

(2) How the applicant used the product—whether it was a reseller, retailer or end user;

(3) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in either of the ERA audits underlying this proceeding;

(4) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(5) Whether the applicant is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(6) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to the appropriate case number (HEF–0141 for O'Connell and HEF–0106 for Key) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by O'Connell Oil Company pursuant to the Consent Order executed on December 1, 1980, and by Key Oil Company pursuant to the Consent Order executed on September 29, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: November 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX.—KEY OIL COMPANY

First purchasers	Share of settlement [1]
Cecil Key Truck Stop, Highway 222 & I65, Glendale, KY 42740	$1,340
Tri County Paving & Stone, Post Office Box 92, Rockfield, KY 42274	736
Gassie Construction Company, 720 Beech Street, Bowling Green, KY 42101	469
Gallatin Oil Company, 411 West Main Street, Gallatin, TN 37066	2,545
Winn Oil Company, 2910 N. Main Street, Madi- sonville, KY 42431	1,071
Nay Oil Company, Louisville, KY 40201	1,004
V.E. Overhold [2]	67
Allen Oil Company [2]	469

[1] This figure includes the share of installment interest. It does not include accrued interest. See footnote 2.

[2] No address available.

[FR Doc. 86–26635 Filed 11–25–86; 8:45 am]

BILLING CODE 6450–01–M

[12] If we are unable to locate any firm listed in the Appendix, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

ENVIRONMENTAL PROTECTION AGENCY

[OA–FRL–3118–8]

Agency Programs Subject to Executive Order 12372 and Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is publishing a revised list of programs which States may choose to review under their official Executive Order 12372 process and which may be subject to section 204 of the Demonstration Cities and Metropolitan Development Act. This Notice is required under 40 CFR Part 29 to make final the list of EPA programs and activities subject to intergovernmental review.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: Corinne S. Allison, Grants Policy and Procedures Branch, Grants Administration Division (PM–216), Environmental Protection Agency 401 M St., SW., Washington, DC 20460 (telephone: (202) 382–5294).

SUPPLEMENTARY INFORMATION: On March 3, 1986, EPA published a Notice (51 FR 7336) proposing to exclude from intergovernmental review under Executive Order 12372 most research, development, and demonstration projects; all EPA-issued interstate plans and permits; all except one training grant program, and certain applications submitted under the Senior Environmental Employment (SEE) Program. The comment period on the proposed exclusions ended on April 17, 1986. As no comments were received, the Agency has determined that the exclusions should be made final. Accordingly, the following list identifies EPA programs, other than those described in the March 3 Notice, which a State may choose to review under an official Executive Order 12372 process. Programs on the list involving projects that may also be subjected to the review requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act are identified with an asterisk (*).

Note: Applications submitted in excluded EPA programs for projects proposed in a metropolitan area may still be subject to review under section 204. Applicants must contact their areawide/Regional/local planning agency designated to perform metropolitan or regional planning for the area regarding this requirement.

PROGRAMS SUBJECT TO EXECUTIVE ORDER 12372 AND SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT

CFDA No.	Assistance program title
*66.001	Air Pollution Control Program Support.
*66.418	Construction Grants for Wastewater Treatment Works.
*66.419	Water Pollution Control State and Interstate Program Support.
(N/A)	Water Pollution Control State and Local Manpower Program Development.
*66.432	State Public Water System Supervision.
*66.433	State Underground Water Source Protection.
*66.435	Water Pollution Control Lake Restoration Demonstration.
*66.438	Construction Management Assistance.
*66.454	Water Quality Management Planning.
*66.455	Construction Grants for Wastewater Treatment Works for Combined Sewer Overflows.
*66.456	Comprehensive Estuarine Management.
*(N/A)	State Inventories of Uncontrolled Hazardous Waste Sites.

PROGRAMS SUBJECT TO EXECUTIVE ORDER 12372 AND SECTION 204 OF THE DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT—Continued

CFDA No.	Assistance program title
66.500	Environmental Protection Consolidated Research.[1]
66.501	Air Pollution Control Research.[1]
66.502	Pesticides Control Research.[1]
66.504	Solid Waste Disposal Research.[1]
*66.505	Water Pollution Control Research, Development, and Demonstration.[1]
*66.506	Safe Drinking Water Research and Demonstration.[1]
66.507	Toxic Substances Research.[1]
66.508	Senior Environmental Employment (SEE) Program.[2]
*66.600	Consolidated Continuing Environmental Program Support.
*66.603	Loan Guarantees for Construction of Treatment Works.
*66.700	Pesticides Enforcement Program Support.
*66.701	Toxic Substances Compliance Monitoring Cooperative Agreements.
66.702	Asbestos Hazards Abatement (Schools) Assistance Program.
*66.801	Hazardous Waste Management State Program Support.
*66.802	Hazardous Substance Response Trust Fund.
*66.804	State Underground Storage Tanks Program.
*(N/A)	State/Local Innovative Waste Management Activities.
*(N/A)	Special Studies, Investigations and Surveys.
	Direct development activity title
*(N/A)	Real property acquisition or disposition, including obtaining major leases or easements.
*(N/A)	Construction of new EPA facilities.
*(N/A)	EPA issued plans and permits which do not impact interstate areas.

[1] Selection is limited to proposals which (a) require an Environmental Impact Statement (EIS); or (b) do not require an EIS but will be newly initiated at a particular site and require unusual measures to limit the possibility of adverse exposure or hazard to the general public; or (c) have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within that geographic area.

[2] Selection is limited to proposals which will provide support to a State or local environmental agency.

Dated: July 28, 1986.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 86-26647 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[A-5-FRL-31191-1]

Announcement of Actions Taken Under the PSD Regulations: Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that USEPA, Region V, has issued two permits under the Federal Prevention of Significant Deterioration (PSD) regulations, codified at 40 CFR 52.21 (as amended on August 7, 1980), to the following two companies: (1) Consolidated Papers, Inc.—permit issued on February 15, 1985; and (2) Quad/Graphics, Inc.—permit issued on December 5, 1985.

ADDRESSES: Copies of the permits and background information are available for inspection at the following addresses. (It is recommended that you telephone William E. Beyer, at (312) 886-6053, before visiting the Region V Office).

Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster Street, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: William E. Beyer, (312) 886-6053.

SUPPLEMENTARY INFORMATION: The PSD permit for Consolidated Papers, Inc., grants approval to construct a 445.16 million BTU/hour (MMBTU/hr) boiler (Boiler No. 5) in the Village of Biron, Wood County, Wisconsin. The boiler will fire sub-bituminous coal, or a combination of such coal and wood bark refuse. The proposed project qualifies as a "major modification" of an existing major stationary source under the PSD regulations. The pollutants reviewed include total suspended particulates (TSP), sulfur dioxide (SO_2), nitrogen oxide (NO_x), carbon monoxide (CO), and volatile organic compounds (VOC). The permit was issued by USEPA on February 15, 1985.[1]

The PSD permit for Quad/Graphics, Inc., grants approval to construct two rotogravure printing presses, a proof press, an electroplating process, and two boilers, each rated at 20.681 MMBTU/hr, in the Village of Lomira, Dodge County,

[1] Prior to their submission to USEPA, both applications were reviewed by the Wisconsin Department of Natural Resources (WDNR) and were subject to public comment and the opportunity for hearing. This is consistent with USEPA's January 29, 1981 (46 FR 9580), partial delegation to WDNR to implement the PSD program. See 40 CFR 52.21(u).

Wisconsin. The proposed project qualified as a major new stationary source under the PSD regulations. The pollutants reviewed include TSP, SO_2, NO_x, CO, and VOC. The permit was issued by USEPA on December 5, 1985.[1]

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within 60 days of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the USEPA to enforce the permit requirements.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Seventh Circuit. A petition for review must be filed with that court on or before January 26, 1986.

Dated: November 17th, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86-26645 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-3118-9]

PSD Permit for Toyota Motor Manufacturing U.S.A., Inc.; Final Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that a Prevention of Significant Deterioration (PSD) permit issued by the Kentucky Department for Environmental Protection (DEP) to Toyota Manufacturing U.S.A., Inc., (Toyota) on June 19, 1986, and revised by DEP on July 17, 1986, became effective on October 2, 1986. The permit was issued for the construction of an automobile assembly plant in Georgetown, Kentucky.

DATE: This action is effective as of October 2, 1986, the date of the Administrator's denial of petitions for review of the Toyota PSD permit.

ADDRESSES: Copies of the permit and the order denying the petitions for review are available for public inpection or upon request at the following locations:

Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, Division of Air Pollution Control, Fort Boone Plaza, 18 Reilly Road, Building #2, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Wayne J. Aronson of the EPA Region IV Air Programs Branch at the Atlanta address above. Telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On June 19, 1986, DEP issued its final determination to issue a PSD permit to Toyota to construct an automobile assembly plant in Georgetown, Kentucky. On July 17, 1986, DEP issued a revised final determination to issue a permit. The final determination and revision were issued by DEP under authority delegated by EPA Region IV on May 19, 1980.

By petitions dated July 18, 1986, Jerry Hammond, Charles Hoffmaster, and Randall Maddox, all residents of Kentucky, petitioned the Administrator of EPA pursuant to 40 CFR 124.19(a) for certain relief regarding the DEP determination. On August 1, 1986, the Administrator denied these petitions (PSD Appeal No. 86-3, Order Denying Petitions for Review).

By petitions dated August 17, 1986, these same petitioners requested review by the Administrator of the revised DEP determination. On October 2, 1986, the Administrator denied these petitions (PSD Appeal No. 86-4, Order Denying Petitions for Review).

The denial by the Administrator of these petitions completes the administrative review procedures available under 40 CFR Part 124, and constitutes final agency action. Petitions for judicial review of this action pursuant to section 307(b)(1) of the Clean Air Act must be filed within sixty days of the publication of this notice.

Dated: November 5, 1986.

Lee A Dehihns, III,

Acting Regional Administrator.

[FR Doc. 86-26646 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-3118-7]

National Air Pollution Control Techniques Advisory Committee and Management Advisory Group to the Construction Grants Program; Advisory Committee Renewals

The U.S. Environmental Protection Agency announces the renewal of the National Air pollution Control Techniques Advisory Committee and the Management Advisory Group to the Construction Grants Program following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of these advisory committees is in the public interest in connection with the performance of duties imposed on the Agency by law. The charters which continue these two advisory committees for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional Committees and the Library of Congress. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Mary Anne Beatty, EPA Committee Management Officer (PM-213), U.S. Environmental Protection Agency, 401 M Street SW., Washington , DC 20460, 202-382-5036.

Dated: November 7, 1986.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

[FR Doc. 86-26648 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-42014D; FRL-3117-2]

Intent To Approve Amendment to Montana Plan for Certification of Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Approve Amended Montana Plan for Certification of Pesticide Applicators of Restricted Use Pesticides.

SUMMARY: The director of the Montana Department of Agriculture has submitted to EPA an amendment to their approved plan for the certification of applicators of restricted use pesticides. This amendment to the Montana certification plan permits certification of Compound 1080 Livestock Protection Collar applicators and applicators of restricted wood preservative pesticides. This amendment also includes changes in laws, regulations, policies, and Department organization that have occurred since the Montana Certification Plan was approved December 13, 1976. Notice is given of the intention of the Regional Administrator, EPA Region VIII, to approve this amendment. A summary of the amendment appears under Supplementary Information. Interested persons are invited to comment.

DATE: Comments should be submitted on or before December 26, 1986.

ADDRESS: Address comments identified by the document control number "OPP-42014D" to: Dean Chaussee, Montana Operations Office, EPA Region VIII,

Federal Office Building, Drawer 10096, 301 South Park, Helena, Montana 59626.

FOR FURTHER INFORMATION CONTACT: Dean Chaussee (406–449–5414).

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended, 86 Stat. 973, 7 U.S.C. 136b and 40 CFR Part 171, Keith Kelly, Director, Montana Department of Agriculture, has submitted to EPA an amendment to the Montana State Plan to permit certification of private and commercial applicators of the Compound 1080 Livestock Protection Collar and applicators of wood preservatives. This amendment also includes changes in laws, regulations, policies and Department organization that have occurred since the plan was originally approved in 1976. Montana regulations subdivide the Federal designation of commercial applicator into designations of commercial, public utility, government, and non-commercial applicators. Whenever the term "commercial applicator" is used in this notice it refers to the Federal designation unless otherwise indicated.

On July 11, 1985, EPA registered Compound 1080 for predator control use in Livestock Protection Collars. Prior to this action, all predator control uses of Compound 1080 had been cancelled. The registration of Compound 1080 Livestock Protection Collars imposed additional reporting and recordkeeping requirements beyond those required of other restricted use pesticides. Further, the registration required that Compound 1080 Livestock Protection Collar applicators receive specific training and a distinct certification. This amendment to the original Montana Certification Plan meets the requirements of the Compound 1080 Livestock Protection Collar registration.

The Montana Plan sets up a special certification subcategory for both private and commercial applicators. Private applicators must meet both the general certification competency standards plus product specific competency standards for the Compound 1080 Livestock Protection Collar. Competency in the product specific standards will be determined through a pass/fail written examination.

Commercial applicators must also meet both the general certification competency standards plus specific competency standards for the Compound 1080 Livestock Protection Collar. Government applicators will be certified in the Predator subcategory under the Regulatory Pest Control major category. Other commercial applicators will be certified in the Vertebrate subcategory under the Agricultural Pest Control major category. Competency will be determined through a pass/fail written examination. The State estimates that there will be 60 private and commercial applicators requesting certification to use the collar.

All private and commercial applicators will be required to complete a training course presented by the Montana Department of Agriculture. The course will use a training package developed by Texas A&M University under a contract from EPA.

Collars will be available to applicators only through the Montana Department of Livestock.

Applicators who cannot read will not be certified.

Reciprocity will be granted only to applicators holding a specific Compound 1080 Livestock Protection Collar certification. Reciprocity will be further linited to those who own or lease land in Montana and to Federal employees engaged in predator control in an official capacity.

The written examination which the Department will use to determine competency was attached to the plan, but will not be available for public review in order to protect the integrity of the examination. EPA has reviewed the examination and determined that it would satisfactorily measure the competence of applicators when completed in conjunction with the other certification requirements.

On January 10, 1986, EPA announced that the wood preservative chemicals creosote, pentachlorophenol, and inorganic arsenicals would be classified as restricted use pesticides effective November 10, 1986. EPA advised the State applicator certification agencies that there were users of these compounds that would need to be certified who may not fit into the standard certification categories. Use of wood preservatives classified as restricted use does not entail any reporting or recordkeeping requirements beyond those of other restricted use pesticides.

The Montana Department of Agriculture has determined that, in the interim, private applicators (i.e., producers of agricultural commodities) can continue to use wood preservatives under their current certification. This conforms to EPA policy. Beginning in late 1987 a section of the private applicator certification training course will be devoted to wood preservatives in those parts of the State where there is a need. In conjunction with the availability of specialized training, private applicators who complete that training will have a wood preservative designation added to their certification. After that time, private applicators who do not receive the wood preservative designation will not be permitted to buy or use the products. Methods of competency determination will remain the same.

The Montana Department of Agriculture has added a new major category for commercial certification entitled Wood Product Pest Control. Commercial applicators using wood preservatives classified for restricted use must become certified in this category regardless of other categories in which they might be certified.

The standards of competency that commercial applicators must meet include knowledge of the equipment and procedures necessary for personal protection both while using the wood preservatives and while using wood products treated with the preservatives; the need to protect users of treated wood products and provide Consumer Information Sheets; disposal requirements; and the procedures necessary to protect livestock, water, and other aspects of the environment. A training course and a written examination covering these specific competency standards are being developed and are expected to be available in October 1986. EPA will review these materials as they become available to insure that the competency standards are adequately addressed.

The Montana Department of Agriculture estimates that approximately 250 commercial applicators will seek training and testing for certification in the Wood Product Pest Control Category. An estimate of the number of private applicators has not been made but will be done as part of the planning effort in 1987 in preparation for the special training effort mentioned above.

Since the Montana Certification Plan was approved in 1976, the State has made numerous changes, mostly minor, in the way the program is set up. During this last year, major changes were made in the State regulations. The Montana Department of Agriculture held public hearings on all changes in regulations and followed the State Administrative procedures rule. Except for the regulatory changes during this last year, the individual changes made were minor. Cumulatively the minor changes become significant. EPA is not required formally to approve minor changes in a State's certification program although EPA did review or make note of the minor changes as they occurred and

remains up-to-date on the State's conduct of the program.

In 1983, the Montana Pesticides Act was amended to increase the maximum criminal penalty that could be assessed and to give the Department of Agriculture the authority to assess a civil penalty administratively. Regulations implementing the civil penalty authority were promulgated in 1986 and are expected to expedite the enforcement process.

Provisions for providing a limited emergency certification to private applicators have been taken out of the program. These provisions were included initially to prevent a hardship on those farmers who were unaware of the requirements for or the existence of the applicator certification program. This program, which has been in place since 1976, should now be common knowledge in the farming community. The State has also deleted provisions for certifying private applicators who are illiterate. This action was deemed necessary because of the necessity of the applicator's being able to read and understand all of the information provided on a pesticide label.

License fees have been increased or, in the case of private applicators, instituted to help offset the cost of operating the program. These fees are used primarily to cover the cost of providing educational materials.

Some changes have been made in the categorization of commercial applicators. The Public Utility category was combined within the Right-of-Way category since both categories cover the same types of pesticide use and differed only in type of employer for whom the applicator worked. A subcategory of the Structural Pest Control Category, entitled Food Manufacturing and Processing, was eliminated because of the small number of applicators within the group. Grain elevator fumigators were placed within the Seed Treatment category because the same people were being certified in both categories and usage problems were similar.

Copies of the plan amendment are available for review at the following locations during normal business hours:

1. Montana Department of Agriculture, Rm. 317, Sixth Ave. and Roberts St., Helena, Montana, (406–444–2944).
2. Montana Operations Office, Environmental Protection Agency, Rm. 292, Federal Office Building, 301 South Park, Helena, Montana, (406–449–5414).
3. Environmental Protection Agency, Rm. 2456, 999 18th St., Denver, Colorado, (303–293–1730).
4. Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703–557–3262).

Interested persons are invited to submit comments.

Dated: November 5, 1986.

John G. Welles,

Regional Administrator, Region VIII.

[FR Doc. 86–26287 Filed 11–25–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30274; FRL–3117–1]

FMC Corp.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register a pesticide product involving a changed use pattern pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by December 26, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP–30274] and the file symbol (279–GNAO) to: Information Services Section (TS–757C), Program Management and Support Division, Attn: Product Manager (PM) 15, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, Attn: PM 15, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca, PM 15, (703–557–2400).

SUPPLEMENTARY INFORMATION: FMC Corp., Agricultural Chemicals Group, 2000 Market St., Phila, PA 19103, has submitted an application to EPA to conditionally register the pesticide product Capture 2 EC®, EPA File Symbol 279–GNAO, containing the active ingredient bifenthrin, (2-methyl[1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate at 25.1 percent, the product involves a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. The application proposes that the product include in its presently registered ornamental use, a new use to control pests on full season cotton. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: November 12, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–26288 Filed 11–25–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180706; FRL–3116–8]

Emergency Exemptions; Dicamba, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the eight States listed below and one quarantine exemption to the U.S. Department of Agriculture. Also listed are two crisis exemptions initiated by the California Department of Food and Agriculture. These exemptions,

issued during the month of September, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, quarantine, and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific exemption for the name of the contact person. The following information applies to all contact people:

By mail:
Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number:
Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of dicamba on fallow land which will be planted to cotton in the spring to control redvine; September 18, 1986 to December 1, 1986. (Libby Pemberton)

2. California Department of Food and Agriculture for the use of sethoxydim on alfalfa to control prairie cupgrass; September 10, 1986 to March 15, 1987. (Libby Pemberton)

3. Florida Department of Agriculture and Consumer Services for the use of fluazifop-butyl on carrots to control grassy weeds; September 2, 1986 to July 31, 1987. (Libby Pemberton)

4. Illinois Department of Agriculture for the use of thiabendazole on stored corn to control fungi; September 5, 1986 to January 1, 1987. (Jim Tompkins)

5. Louisiana Department of Agriculture for the use of fenvalerate on sorghum grain to control the sorghum midge; September 24, 1986 to September 30, 1986. Louisiana had initiated a crisis exemption for this use. (Stan Austin)

6. Mississippi Department of Agriculture and Commerce for the use of dicamba on fallow land which will be planted to cotton in the spring to control redvine; September 18, 1986 to December 1, 1986. (Libby Pemberton)

7. Oregon Department of Agriculture for the use of carbofuran on mint to control strawberry root weevil larvae; September 8, 1986 to October 31, 1986. (Stan Austin)

8. Texas Department of Agriculture for the use of fenvalerate on sorghum grain to control the sorghum midge; September 24, 1986 to September 30, 1986. Texas had initiated a crisis exemption for this use. (Stan Austin)

9. Texas Department of Agriculture for the use of 2,6-dichloro-4-nitroaniline on peanuts to control *Sclerotinia;* September 19, 1986 to October 17, 1986. (Jim Tompkins)

EPA issued a quarantine exemption to the U.S. Department of Agriculture for the use of lure baits containing naled and methyl eugenol on inanimate objects to control the guava fruit fly in California; September 5, 1986 to September 4, 1989. U.S. Department of Agriculture had initiated a crisis exemption for this use. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on September 5, 1986, for the use of aluminum phosphide on wild rice to control grain borers and grain noths. Since it was anticipated that this program would be needed for more than 15 days, California requested a specific exemption to continue it. The need for this program is expected to last until December 31, 1986. (Stan Austin)

2. California Department of Food and Agriculture for the use of malathion on persimmons to control the oriental fruit fly. Since it was anticipated that this program would be needeed for more than 15 days, California requested a quarantine exemption to continue it. The need for this program is expected to last for 3 years. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: November 12, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86–26391 Filed 11–25–86; 8:45 am]

BILLING CODE 6560–50–M

[PP 4G3156/T532; FRL–3116–9]

American Hoechst Corp.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate and its metabolite in or on certain raw agricultural commodities. These temporary tolerances were requested by American Hoechst Corp.

DATE: These temporary tolerances expire January 1, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1830).

SUPPLEMENTARY INFORMATION:

American Hoechst Corp.; Agricultural Division, Route 202–206 North, Somerville, NJ 08876, has requested in pesticide petition PP 4G3156 the establishment of temporary tolerances for the combined residues of the herbicide monoammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate and its metabolite of 3-methylphosphinicopropionic acid, in or on the raw agricultural commodities soybean seed, citrus, pome fruit, grapes, and stone fruit at 0.05 part per million (ppm).

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 8340–EUP–10, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire January 1, 1988. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or

scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: November 10, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-26289 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36130; FRL-3118-5]

Publication of Addenda on Data Reporting to Pesticide Assessment Guidelines

AGENCY Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Addenda to the Pesticide Assessment Guidelines on reporting the following studies: avian oral LD_{50}, dietary LC_{50} and reproduction, developmental toxicity, rotational crops, storage stability, analytical method(s), and crop field trials have been finalized and are now available to the public from the National Technical Information Service. The addenda supersede paragraphs in the Guidelines on data reporting and provide a format for the preparation of study reports by those submitting data to EPA. While these Guidelines are not mandatory at this time, data submitters are encouraged to follow the format so that reports will be consistent, thereby increasing the efficiency of pesticide registration and other regulatory activities.

ADDRESS: Guidelines can be ordered from: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

FOR FURTHER INFORMATION CONTACT:

Elizabeth M.K. Leovey, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number Rm. 703B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Va, (703-557-2162).

SUPPLEMENTARY INFORMATION: The specific addenda, with NTIS order numbers, currently available from NTIS are as follows:

Document title	NTIS document No.	EPA document No.
Pesticide Assessment Guidelines—Subdivision E Addendum 1.	PB86-248176	540/9-86-152
Hazard Evaluation: Wildlife and Aquatic Organisms		
Series 71-2—Acute Dietary LC_{50} Test for Waterfowl and Upland Game Birds.		
Series 71-1—Acute Oral LD_{50} Test for Waterfowl and Upland Game Birds.		
Series 71-4—Avian Reproduction Test for Waterfowl and Upland Game Birds.		
Pesticide Assessment Guidelines—Subdivision F Addendum 1.	PB86-248184	540/9-86-150
Hazard Evaluation: Humans and Domestic Animals		
Series 83-3—Rat or Rabbit Developmental Toxicity Study.		
Pesticide Assessment Guidelines—Subdivision N Environmental Fate.	*PB86-247848*	*540/9-86-149*
Series 165-2—Field Accumulation Studies on Rotational Crops, Addendum 1 on Data Reporting.		
Pesticide Assessment Guidelines—Subdivision O Addendum 2, Residue Chemistry.	PB86-248192	540/9-86-151
Series 171-4—Analytical Method(s), Magnitude of the Residue: Crop Field Trials, and Storage Stability Study..		

These documents were reviewed by the U.S. Department of Agriculture, the Food and Drug Administration, and other organizations within EPA. They were discussed by the FIFRA Scientific Advisory Panel in a public meeting on September 27, 1985 and underwent public comment announced in the **Federal Register** of July 31, 1985 (50 FR 31010). The documents were revised to reflect consideration of these comments, and the public comments are addressed in the documents.

Orders may be placed by mail or telephone. All orders should specify whether the document is requested in hard copy or microfiche form since prices vary for hard copy but are a consistent $5.95 for the microfiche. For the documents listed in this notice, the price of the paper copy is $9.95. There is an additional $3.00 handling charge for each order. Payment may be made by charging against an NTIS deposit account; charging to VISA, MasterCard, or American Express; or by check or money order. In all orders, the document title, NTIS order number of the document, desired form of the document (microfiche or hard copy), and the price must be stated.

Data Reporting Guidelines for the remaining major studies in the Pesticide Assessment Guidelines will also be published. Publication will be announced in the **Federal Register**.

Dated: October 27, 1986.

Anne Barton,

Acting Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 86-26517 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59234; FRL-3119-5]

Certain Chemical Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TIME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-62. The test marketing conditions are described below:

EFFECTIVE DATE: November 3, 1986. Written comments will be received until December 11, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59234]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202 382-3532).

FOR FURTHER INFORMATION CONTACT: Sally Sasnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M St., SW., Washington, DC 20460, (202-382-3861).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-86-62. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently notice of receipt of the application was not published; therefore, an opportunity to submit comments is being offered at this time. The complete non-confidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

The following additional restrictions apply to TME-86-62. A bill of lading accompanying each shipment must state that the uses of the substance are restricted to those approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-86-62

Date of Receipt: September 24, 1986.

Close of Review Period: November 7, 1986. The extended comment period will close November 11, 1986.

Applicant/Importer: Confidential.

Chemical: (G) Aliphatic polycarboxilic acid metal salt.

Use: (G) Contained use bleaching agent.

Production Volume: Confidential.

Number of Customers: Confidential.

Toxicity Data: Non mutagenic

Worker Exposure: Confidential.

Environmental Release/Disposal: Confidential.

Test Marketing Period: Three Months. *Commencing on:* November 3, 1986.

Risk assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not represent any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 3, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-26649 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS—51566B; FRL 3119-4]

Certain Chemical; Premanufacture Notice Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is revoking, effective November 8, 1986, following the signing of a Consent Order for the new chemical substance subject to premanufacture notice (PMN) P-85-735, the remaining portion of a 90-day extension of the review period for PMN P-85-735, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Kenneth Moss, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202-382-3395).

SUPPLEMENTARY INFORMATION: The original 90-day review period for PMN P-85-735 was scheduled to expire on December 22, 1985. EPA published a section 5(c) extension notice for the PMN, in the **Federal Register** of December 31, 1985 (50 FR 53395), to provide the Agency with sufficient time to issue an order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substance in, or importing it in powder form into, the United States pending the submission and evaluation of test or monitoring data addressing the potential risk of injury to human health.

The review period, including the extension under section 5(c), is scheduled to expire January 19, 1987. After the Order was proposed, the company suspended the notice review period and submitted more data and information. In light of this new data and information, EPA and the Company

agreed to enter into a Consent Order addressing the potential risk of injury to health.

Therefore, EPA is revoking the remaining portion of the extended review, effective immediately.

Dated: November 8, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86-26650 Filed 11-25-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

November 19, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0003
Title: Application for Amateur Radio Station and/or Operator License
Form No.: FCC 610
Action: Revision
Estimated Annual Burden: 118,750 Responses; 9,856 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26623 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

Information Collection Requirement Approvals by Office of Management and Budget

November 18, 1986.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0089
Title: Application for Land Radio Station License in the Maritime Services
Form No.: FCC 503
A revised application form FCC 503 has been approved for use through 10/31/89. The January 1986 edition with an expiration date of 11/30/87 will remain in use until revised forms are available.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26622 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

November 18, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 2037, telephone (202) 857-3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No: 3060-0064
Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service
Form No.: FCC 402
Action: Revision
Estimated Annual Burden: 7,619 Responses; 45,714 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26621 Filed 11-25-86 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1629]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 17, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Rock Harbor, Florida) (MM 85-372, RM-5172) Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26625 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

[File Nos. BPH-850712P5 et al.; MM Docket No. 86-425]

Applications for Consolidated Hearing; Teton Broadcasting Ltd. Partnership, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Teton Broadcasting Limited partnership; Jackson, WY.	BPH-850712P5	86-425.
B. Kova Communications Limited; Jackson, WY.	BPH-850712P6	
C. Jackson Skywave, Inc.; Jackson, WY.	BPH-850712P8	
D. Echonet Corporation; Jackson, WY.	BPH-850712P9	
E. Beacon Broadcasting, Inc.; Jackson, WY.	BPH-850712Q2	(Dismissed.)
F. Archie Givens, Jr.; Jackson, WY.	BPH-850712Q4	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental Impact, A, C, D, F
2. Site Availability, B
3. Air Hazard, B, C, D, F
4. Comparative, A, B, C, D, F
5. Ultimate, A, B, C, D, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete hearing designation order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commissions duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26624 Filed 11-25-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-009847-016.
Title: U.S. Atlantic Coast/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritime Netumar
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-009848-018.
Title: U.S. Gulf Ports/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010027-016.
Title: Brazil/U.S. Atlantic Coast Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar S/S
United States Lines (S.A.) Inc.
A/S Ivarans Rederi
Empresa Lineas Maritimas Argentinas S/A
A. Bottacchi S.A. de Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co., B.V.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010286-010.
Title: Italy-U.S.A. North Atlantic Pool Agreement.
Parties:
Compania Trasatlantica Espanola, S.A.
Jugolinija
Nedlloyd Lines
Zim Israel Navigation Company, Ltd.
"Italia" di Navigazione, S.P.A.
Farrell Lines, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would extend a provision excluding non-containerizable cargo from pool cargo to September 30, 1987, and would give additional individuals authority to execute and file amendments to the agreement.

Agreement No.: 212-010320-014.
Title: Brazil/U.S. Gulf Ports Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia Martima Nacional
United States Lines (S.A.) Inc.
Empresa Linera Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Transportation Maritima Mexicana S.A.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010382-010.
Title: Agrentina/U.S. Guld Ports Agreement.
Parties:
A. Bottacchi S.A. de Navegacion C.F.I.I.
Cia. de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Empresa Lineas Maritimas Argentinias S.A.
Reefer Express Lines Pty. Ltd.
Transportacion Maritima Mexicana S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010386-009.
Title: Argentina/U.S. Atlantic Coast Agreement.
Parties:
A. Bottacchi S.A. de Navegacion C.F.I.I.
Cia. de navegacago Lloyd Brasileiro
Empresa Lineas Martimas Argentinas S.A.
United States Lines (S.A.) Inc.
Reefer Express Lines Pty., Ltd.
Van Nievelt, Goudriaan & Co., by (Holland Pan Am)

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010388-006.
Title: U.S. Atlantic Coast/Argentina Agreement.
Parties:
A. Bottacchi S.A. de Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 212-010389-006.
Title: U.S. Gulf Ports/Argentina Agreement.
Parties:
A. Bottacchi S.A. de Navegacion C.F.I.I.
Empresa Lineas Maritimas Argentinas S.A.
United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would extend the provisions of the agreement governing alternate coast service until December 31, 1987.

Agreement No.: 202-010676-022
Title: Mediterranean/U.S.A. Freight Conference.
Parties:
Achille Lauro

C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
"Italia" de Navigazione, S.p.A.
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would extend indefinitely the previously filed 48 hour notice period, excluding Saturdays, Sundays and Holidays, for independent action on rate or service items or freight forwarder compensation.

Dated: November 21, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-26639 Filed 11-25-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Rules of Organization; Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendments.

SUMMARY: The Secretary of the Board has approved technical amendments to the Board's Rules of Organization to reflect organizational changes. The amendments will bring descriptions of the functions of various offices and divisions of the Board up to date.

EFFECTIVE DATE: November 26, 1986.

FOR FURTHER INFORMATION CONTACT: James McAfee, Associate Secretary (202-452-3259), or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board's Rules of Organization is an uncodified regulation issued as required by section (a)(1) of the Freedom of Information Act, 5 U.S.C. 552(a)(1). Copies are available from the Board's Publication Section, Washington, DC 20551 (202) 452-3245.

Rules of Organization

1. Paragraph (b) of section 2 of the Board's Rules of Organization is revised to read as follows:

SECTION 2—Composition and Location

* * * * *

(b) *Location and business hours.* The principal offices of the Board are at 20th Street and Constitution Avenue NW., Washington, DC 20551. The public entrance is at 20th and C Streets NW. The Board's regular business hours are from 8:45 a.m. to 5:15 p.m. each weekday except Saturday, but its business hours may be changed from time to time.

2. Section 3 of the Board's Rules of Organization is revised to read as follows:

SECTION 3—Central Organization

The Board's central organization consists of the members of the Board and the following offices, divisions, and officials:

(a) *Office of Board Members* consists of the members of the Board, and assistants and special assistants to the Board assigned to public affairs and congressional liaison.

(b) *Office of Staff Director for Monetary and Financial Policy* is responsible for preparation of position papers and other documents on monetary policy issues, including issues relating to open market, discount, and reserve requirements policy; performance of secretariat functions for the Federal Open Market Committee; coordination of regulatory and statistical issues closely related to monetary policy; liaison with the trading desk at the Federal Reserve Bank of New York in connection with open market operations; liaison with Treasury and other agencies in the domestic financial area; coordination with the System Account Manager and with the Treasury on foreign exchange market operations, Eurodollar and international banking policy issues; coordination of analysis and development of options for Board consideration with regard to foreign exchange policies and the international payments mechanism; and appropriate staff coordination with other agencies in these areas.

(c) *Office of Staff Director for Federal Reserve Bank Activities* is responsible for overseeing the Division of Federal Reserve Bank Operations, assisting the Board's Committee on Federal Reserve Bank Activities, and coordinating the functions of other Board divisions that relate to Federal Reserve Bank matters. The responsibilities of this office also include all Reserve Bank director matters, coordination of the annual evaluation program for Federal Reserve Banks, the Federal Reserve System's program for emergency preparedness, and representing the Board in activities pertaining to Bank operational matters in meetings with foreign central banks and other United States government agencies.

(d) *Office of Staff Director for Management* is responsible for the planning and coordination of staff operations and organization, resource management, and supervision of the following functions: Board building administration and operations, Board budget and accounting activities, the Automation Policy and Programs Committee, personnel-related activities, equal employment opportunity, and contingency planning operations.

(e) *Office of the Executive Director for Information Resource Management* is responsible for overseeing the Division of Hardware and Software Systems and the Division of Applications Development and Statistical Services. The office has overall responsibility for advanced planning and conceptual application of technology, for automation policy, and for coordination of automation projects with other components of the Federal Reserve System.

(f) *Office of the Secretary*, headed by the Board's secretary, coordinates and handles items requiring Board action, including actions under delegated authority; prepares agendas for Board meetings; implements actions taken at Board meetings; prepares, circulates, and indexes minutes of the Board; has responsibility for the Board's regulatory planning and review; publishes the *Federal Reserve Regulatory Service* and related manuals; provides liaison at the staff level with the Federal Advisory Council, the Thrift Institutions Advisory Council, and *ad hoc* groups of the Reserve Banks; makes arrangements for individuals and groups visiting the Board; maintains custody of and provides reference service to official records of the Board; handles correspondence and public requests for records; secures visas for official travel of System personnel; and provides relief secretarial and stenographic services.

(g) *Legal Division*, headed by the Board's general counsel, advises the Board in carrying out its statutory and regulatory responsibilities by the preparation of Board decisions, regulations, rules, instructions, and legal interpretations of statutes and regulations, administered by the Board; represents the Board in civil litigation and administrative proceedings; assists other divisions in fulfilling their responsibilities in such areas as contracting, fiscal agency activities, Federal Reserve Bank matters, labor law, personnel, and supervisory enforcement matters; and prepares

testimony or comments on proposed legislation.

(h) *Division of Research and Statistics*, headed by a director, provides the Board and the Federal Open Market Committee with the economic analysis and information needed for current operations, for the formulation of monetary and credit policies, and for the exercise of responsibilities with regard to bank regulation; prepares, publishes, and interprets a variety of statistical series in the financial and nonfinancial fields; conducts basic research relating to the effects of monetary policy on economic activity and prices and to the effects of financial regulation on the structure and functioning of financial markets.

(i) *Division of International Finance*, headed by a director, provides the Board, the Federal Open Market Committee, and other System officials with assessments of current international economic and financial developments. Staff members analyze major economic and financial developments abroad, issues connected with exchange market developments, international financial flows and their implications, the international monetary and financial systems and their evolution, and the balance-of-payments adjustment process. The division provides economic data and analyses for public release. It also works with the Chairman and other Board members in their roles as members of various interagency bodies dealing with international economic policy issues.

(j) *Division of Federal Reserve Bank Operations*, headed by a director, advises and assists the Board in its oversight of Reserve Bank operations. The division is responsible to the Board on matters concerning payments system policy, the price and level of Federal Reserve Bank services (check collection, funds transfer, automated clearing house, net settlement, securities, and coin and currency), and improvements to the efficiency of the payments mechanism. It also maintains liaison with interested parties on payments matters.

The division reviews and appraises Reserve Bank communications and automation plans and proposals, as well as Reserve Bank building plans. It reviews proposed Reserve Bank budgets; administers expense control and budgeting system for collection and analysis of budget and expense data; prescribes accounting principles, standards, and related requirements to be followed by the Reserve Banks; and provides certain centralized financial accounting services.

The division conducts an annual financial examination of each Reserve Bank. It also conducts operational reviews of various Reserve Bank functions, including: check collection, electronic payments, coin and currency, securities, fiscal agency, open market, protection, data processing, communications, accounting, and audit.

The division maintains liaison with the Treasury and other government agencies to facilitate the System's role as fiscal agent to the United States. It also coordinates the printing and distribution of Federal Reserve notes and is jointly responsible with the Bureau of the Mint for the production and distribution of coin.

(k) *Division of Banking Supervision and Regulation*, headed by a director, coordinates the bank supervisory functions of the System and evaluates the examination procedures of the Reserve Banks; exercises general supervision of the commercial and fiduciary activities of state member banks; administers the supervisory features of laws and regulations relating to affiliates and bank holding companies; supervises various foreign banking activities of member banks and foreign banking and financing corporations; administers the public disclosure provisions of the Securities Exchange Act of 1934, as amended, in their application to state member banks, and the provisions of the act giving responsiblity to the Board for regulating security credit transactions; administers the pertinent provisions of the Financial Institutions Supervisory Act of 1966, and amendments contained in the Financial Institutions Regulatory and Interest Rate Control Act of 1978, in their application to state member banks, bank holding companies, nonbank subsidiaries, Edge Act corporations, foreign banks with domestic operations, and persons related to such institutions; monitors the Currency and Foreign Transactions Reporting Act in its application to state member banks and Edge Act corporations; processes and presents to the Board applications filed pursuant to the Bank Holding Company Act of 1956, as amended, and the Bank Merger Act and various other applications submitted under the provisions of the Federal Reserve Act or related statutes; and advises the Board regarding developments in banking and bank supervisory policies and procedures.

(l) *Division of Consumer and Community Affairs*, headed by a director, implements consumer affairs legislation for which the Board has responsibility. Its functions include drafting regulations and interpretations pursuant to the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Fair Credit Billing Act, the Consumer Leasing Act, the Electronic Funds Transfer Act, and the Federal Trade Commission Improvements Act, for financial institutions and other firms engaged in consumer credit, electronic funds transfer, and leasing activities. The division also administers the Board's consumer complaint handling system and directs and monitors enforcement activities with regard to state member banks. The legislation enforced includes the acts mentioned as well as the Company Reinvestment, Fair Credit Reporting, Fair Debt Collection Practices, Fair Housing, Flood Disaster Protection, and Real Estate Settlement Procedures Acts and Regulation Q, Interest on Deposits. The division assists the community affairs activities of the Reserve Banks, which are related to the Federal Reserve's Community Reinvestment Act responsibilities.

(m) *Division of Personnel*, headed by a director, is responsible for the development and implementation of Board personnel policies and programs, and advises and assists the Board and the Reserve Banks on personnel matters pertaining to the Federal Reserve Banks.

(n) *Division of Support Services*, headed by a director, is responsible for duplication and distribution of Board publications, press releases, speeches and testimony; space management; printing, contracting, and supply services, communications; food service management; operation and maintenance of electrical and mechanical systems; buildings and grounds maintenance; and personnel and building security.

(o) *Office of the Controller*, headed by the Board's controller, assists the Board's divisions and the Federal Financial Institutions Examination Council in establishing and operating within their organizational structures, in managing their resources, and in ensuring the propriety and accountability of resource utilization by: Administering the budget functions of planning, formulating, executing, reviewing, and reporting; receiving and disbursing funds; maintaining books of account; developing means to improve operations; conducting organizational analyses; conducting program analyses; providing financial analysis and consultation; reporting results of operations; conducting special studies; maintaining records of organizational and financial transactions; assuring that proper cost/benefit and lease purchase analyses are a part of major capital

investments; and participating in or supporting managerial committees and task forces.

(p) *Division of Hardware and Software Systems*, headed by a director, is responsible for the overall planning, acquisition, implementation, operation, and maintenance of the Board's automation and data communications equipment, environmental operating and data base systems software, data processing and communications security, mainframe linkage to distributed processing, and other hardware and environmental software required at the Board and the Contingency Processing Center (CPC). The division is responsible for providing a climate in which users share responsibility in determining needs and translating these needs into services, and providing effective and efficient improvements in all automation and communication system services to the Board and through the CPC to the Federal Reserve System.

(q) *Division of Applications Development and Statistical Services*, headed by a director, is responsible for the design, development, and implementation of applications software; for the collection, processing, and maintenance of statistical and regulatory data provided by commercial banks, bank holding companies, other financial institutions, and Federal Reserve Banks, and for the provision of technical consulting services relating to automation activities in other Board divisions and offices.

(r) *Other personnel.* The Board does not employ administrative law judges or hearing officers as regular members of its staff, but, in accordance with applicable provisions of law and in individual cases as the need may arise, the Board obtains and utilizes administrative law judges and hearing officers, whose functions in such capacity are appropriately separated, as required by law, from investigative and prosecuting functions of the staff.

3. The appendix to the Board's Rules of Organization is revised to read as follows:

Appendix

Federal Reserve Banks

*Boston**

600 Atlantic Avenue, Boston, Massachusetts 02106

*New York**

33 Liberty Street (Federal Reserve P.O. Station), New York, New York 10045

Buffalo Branch

160 Delaware Avenue, Buffalo, New York 14202 (P.O. Box 961, Buffalo, New York 14240)

Philadelphia

Ten Independence Mall, Philadelphia 19106 (P.O. Box 66, Philadelphia, Pennsylvania 19105)

*Cleveland**

1455 East Sixth Street (P.O. Box 6387), Cleveland, Ohio 44101

Cincinnati Branch

150 East Fourth Street (P.O. Box 999), Cincinnati, Ohio 45201

Pittsburgh Branch

717 Grant Street (P.O. Box 867), Pittsburgh, Pennsylvania 15230

*Richmond**

701 East Byrd Street, Richmond, Virginia 23219 (P.O. Box 27622, Richmond, Virginia 23261)

Baltimore Branch

502 S. Sharp Street, Baltimore, Maryland 21201 (P.O. Box 1378, Baltimore, Maryland 21203)

Charlotte Branch

401 South Tryon Street (P.O. Box 30248), Charlotte, North Carolina 28230

Culpepper Communications and Records Center

P.O. Drawer 20, Culpepper, Virginia 22701

Atlanta

104 Marietta Street, NW., Atlanta, Georgia 30303 (P.O. Box 1731, Atlanta, Georgia 30301–1731)

Birmingham Branch

1801 Fifth Avenue, North, Birmingham, Alabama 35202 (P.O. Box C–10447, Birmingham, Alabama 35283)

Jacksonville Branch

515 Julia Street, Jacksonville, Florida 32231

Miami Branch

9100 Northwest 36th Street, Miami, Florida 33178 (P.O. Box 520847, Miami, Florida 33152)

Nashville Branch

301 Eighth Avenue, North, Nashville, Tennessee 37203

New Orleans Branch

525 St. Charles Avenue (P.O. Box 62630), New Orleans, Louisiana 70161

*Chicago**

230 South La Salle Street (P.O. Box 834), Chicago, Illinois 60690

Detroit Branch

160 Fort Street, West (P.O. Box 1059), Detroit, Michigan 48231

St. Louis

411 Locust Street, St. Louis, Missouri 63102 (P.O. Box 442, St. Louis, Missouri 63166)

Little Rock Branch

325 West Capital Avenue (P.O. Box 1261), Little Rock, Arkansas 72203

Louisville Branch

410 South Fifth Street, Louisville, Kentucky 40201 (P.O. Box 32710, Louisville, Kentucky 40232)

Memphis Branch

200 North Main Street, Memphis, Tennessee 38103 (P.O. Box 407, Memphis, Tennessee 38101)

Minneapolis

250 Marquette Avenue, Minneapolis, Minnesota 55480

Helena Branch

400 North Park Avenue, Helena, Montana 59501

Kansas City

925 Grand Avenue, Kansas City, Missouri 64198

Denver Branch

1020 16th Street, Denver, Colorado 80202 (Terminal Annex—P.O. Box 5228, Denver, Colorado 80217)

Oklahoma City Branch

226 Dean A. MCGee Avenue (P.O. Box 25129), Oklahoma City, Oklahoma 73125

Omaha Branch

1710 Dodge Street (P.O. Box 3958), Omaha, Nebraska 68102

Dallas

400 South Akard Street (Station K), Dallas, Texas 75222

El Paso Branch

301 East Main Street (P.O. Box 100), El Paso, Texas 79999

Houston Branch

1701 San Jacinto Street, Houston, Texas 77002 (P.O. Box 2578), Houston, Texas 77252)

San Antonio Branch

126 East Nueva Street, San Antonio, Texas 78204 (P.O. Box 1471, San Antonio, Texas 78295)

San Francisco

101 Market Street, San Francisco, California 94104 (P.O. Box 7702, San Francisco, California 94120)

Los Angeles Branch

409 West Olympic Boulevard, Los Angeles, California 90015 (Terminal Annex—P.O. Box 2077, Los Angeles, California 90051)

Portland Branch

915 S.W. Stark Street, Portland, Oregon 97025 (P.O. Box 3436, Portland, Oregon 97208)

Salt Lake City Branch

120 South State Street, Salt Lake City, Utah 84111 (P.O. Box 30780, Salt Lake City, Utah 84125)

Seattle Branch

1015 Second Avenue, Seattle, Washington 98104 (P.O. Box 3567, Seattle, Washington 98124)

Board of Governors of the Federal Reserve System, November 21, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–26685 Filed 11–25–86; 8:45 am]

BILLING CODE 6210–01–M

*Additional offices of these Banks are located at Lewiston, Maine 04240; Windsor Locks, Connecticut 06096; Cranford, New Jersey 07016; Jericho, New York 11753; Utica at Oriskany, New York 13424; Columbus, Ohio 43216; Columbia, South Carolina 29210; Charleston, West Virginia 25328; Des Moines, Iowa 50306; Indianapolis, Indiana 46204; and Milwaukee, Wisconsin 53202.

Change in Bank Control Notices; Acquisitions of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Robert J. McFann*, Lakewood, Colorado; Robert Gregory, Denver, Colorado; Brent V. Lovejoy, Englewood, Colorado; Douglas R. Olson, Denver, Colorado; Equity Concepts, Englewood, Colorado; Edward I. Nichols, Denver, Colorado; Nancy Gallanis and Michael Krueger, Denver, Colorado; and Glen B. Clark, Jr., Denver, Colorado; to acquire 44.4 percent of the voting shares of The Bank of Aurora, Aurora, Colorado.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Roy Doumani*, Beverly Hills, California; Gerald L. Parsky, Los Angeles, California; William E. Simon, Morriston, New Jersey; and Larry B. Thrall, Jr., Beverly Hills, California; to acquire an additional 54.4 percent of the voting shares of World Trade Bancorp, Beverly Hills, California, and thereby indirectly acquire World Trade Bank, N.A., Beverly Hills, California.

2. *Kem Gardner*, Salt Lake City, Utah; to acquire an additional 22 percent of the voting shares of Union Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Union Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26604 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Duco Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 16, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Duco Bancshares, Inc.*, Villa Park, Illinois; to acquire Banill Corporation, Normal, Illinois, and thereby engage in insurance sales as an agent or broker for the sale of life, health and accident insurance that is directly related to extension of credit by its subsidiary bank, through the acquisition of Company pursuant to 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Normal and Bloomington, Illinois and surrounding McLean County. Comments on this application must be received by December 4, 1986.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire Goldome Premium Finance, Inc., Bohemia, New York, and thereby engage in financing the payment of consumer and commercial insurance premiums through its indirect subsidiary, Security Pacific Insurance Premium Financing, Inc., from offices in Baltimore, Maryland; Keene, New Hampshire; Cherry Hill and Keyport, New Jersey; and Buffalo, New York, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26607 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Financial Corporation of Central Illinois, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 15, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Financial Corporation of Central Illinois, Inc.*, Strasburg, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Strasburg State Bank, Strasburg, Illinois.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26608 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Irving Bank Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through its subsidiary, Irving Trust Company California, San Francisco, California, in performing the functions or activities which may be performed by a trust company (including activities of a fiduciary, agency or custodial nature) in the manner authorized by the law of the State of California pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26609 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

Warranty Bancorporation

This notice corrects a previous **Federal Register** document (FR Doc. 86-25790), published at page 41434 of the issue for Friday, November 14, 1986.

Under the Federal Reserve Bank of Chicago, the entry for Warranty Bancorporation is corrected to read as follows:

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Warranty Bancorporation*, Ottumwa, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of South Ottumwa Savings Bank, Ottumwa, Iowa.

Comments on this application must be received by November 28, 1986.

Board of Governors of the Federal Reserve System, November 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26610 Filed 11-25-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

GSA Bulletin FPMR A-91; General

November 13, 1986.

To: Heads of Federal agencies

Subject: Use of GSA office relocation contracts.

1. *Purpose.* This bulletin advises Federal agencies that effective July 3, 1986, FPMR Amendment G-79 (51 FR 24329, July 3, 1986) amended 41 CFR 101-40.109-2 and 101-40.109-3 by removing the provision for mandatory use of office relocation contracts entered into by the General Services Administration (GSA) on or after July 3, 1986.

2. *Applicability.* The guidelines in this bulletin apply to all civilian executive agencies subject to 41 CFR Part 101-40.

3. *Expiration date.* This bulletin expires October 31, 1987, unless sooner canceled or revised.

4. *Background.* Prior to July 3, 1986, agencies were authorized to make their own arrangements for office relocations within specified dollar thresholds. In all other instances, GSA entered into term and single office move contracts, and these contracts were made mandatory for use by all agencies. GSA has determined that use of GSA office relocation contracts will no longer be mandatory on other agencies. Therefore, FPMR Amendment G-79 was issued to authorize agencies either to enter into their own office relocation contracts or request the appropriate GSA office (see 41 CFR 101-40.101-1) to enter into contracts on behalf of the requesting agency.

5. *Effect on existing contracts.* GSA mandatory use office relocation contracts entered into prior to July 3, 1986, will remain in force for the life of those contracts. When those contracts expire, new contracts will be subject to the nonmandatory provisions of FPMR Amendment G-79. Mandatory contracts entered into prior to July 3, 1986, are not to be extended through exercise of renewal options. Before contracting for office relocation services, agencies should confer with the appropriate GSA office to determine if any mandatory use contracts are still in effect.

By delegation of the Commissioner, FSS.

William B. Foote,

Assistant Commissioner, Office of Policy and Agency Liaison.

[FR Doc. 86-26626 Filed 11-25-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Small Grant Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986., (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, (ADAMHA), announces

the reestablishment, effective December 2, 1986, of the following committee: Mental Health Small Grant Review Committee.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

This notice is late because of very recent legislative changes which necessitated revisions of committee charter documents.

Dated: November 20, 1986.

Donald Ian Macdonald

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-26651 Filed 11-25-86; 8:45 am]

BILLING CODE 4160-20-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 15, 16 and 17. The meetings will be held in the Solarium, 11th Floor, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 15 from 9:00 a.m. until 12:00 p.m. and 1:15 p.m. until 5:45 p.m. During this open session, the permanent staff of the Laboratories of Immunology and Immunoregulation will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Board will be closed to the public on December 15 from 8:30 a.m. until 9:00 a.m., and from 12:00 p.m. until 1:15 p.m., and on December 16 from 8:00 a.m. until recess and on December 17 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meeting and rosters of the Board members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301) 496-3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: November 13, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-26617 Filed 11-25-86; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is hereby given that Chapter SE, as published in the **Federal Register** on August 7, 1979, and as amended on May 7, 1984 and June 13, 1984, is being amended to reflect the establishment of the Office of Communications Technology. This change consolidates the Agency's audiovisual and graphics functions. The revisions are as follows:

Chapter SE—Office of Governmental Affairs

SE.00 Mission
SE.10 Organization
SE.20 Functions

Section SE.10 The Office of Governmental Affairs—(Organization):

Add:

F. The Office of Communications Technology ( ).

Section SE.20 The Office of Governmental Affairs—(Functions):

Add:

F. The Office of Communications Technology ( ) directs and implements technical information communications functions for the Agency. The Office is responsible for the design and production of audiovisual and graphics materials. The Office utilizes state-of-the-art technological theories, principles and methodologies, in determining and creating the most effective means of communicating the Agency's information.

Dated: November 7, 1986.

Nelson J. Sabatini,

Deputy Commissioner for Management and Assessment.

[FR Doc. 86-26641 Filed 11-25-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-86-1654]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, Telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S.

Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee's Certification and Application for Interest Reduction Payments
Office: Administration
Form Number: HUD–3111
Frequency of Submission: Monthly
Affected Public: State or Local Governments and Businesses or Other For-Profit
Estimated Burden Hours: 90
Status: Extension
Contact: Inder K. Varma, HUD, (202) 755–6706; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: November 19, 1986.

Proposal: Tenant Participation and Management in Public Housing Projects; Eligibility for Comprehensive Improvement Assistance Program Funds
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 5,800
Status: Revision
Contact: Janice Rattley, HUD, (202) 755–1800; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: November 19, 1986.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Project Implementation Schedule
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 2,000
Status: Extension
Contact: Pris P. Buckler, HUD, (202) 755–6640; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 19, 1986.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 86–26632 Filed 11–25–86; 8:45 am]

BILLING CODE 4210–1–M

[Docket No. N–86–655]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATON CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement or an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Mortgage Insurance Premium Questionnaire
Office: Administration
Form Number: HUD–2753
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 1,200
Status: Reinstatement
Contact: Robert Wiggins, HUD, (202) 426–8980; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 20, 1986.

Donald C. Demitros,

Director, Office of Information Policies and Systems.

[FR Doc. 86–26631 Filed 1–25–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY 920 07 4121–10]

Powder River Regional Coal Team; Availability of Proposed Data Adequacy Standards for the Powder River Coal Region and an Addition to the Upcoming Powder River Regional Coal Team Meeting

SUMMARY: Proposed Data Adequacy Standards for the Powder River Region are available upon request beginning November 7, 1986. The public is invited to comment on these standards. In addition, the agenda for the Powder River Regional Coal Team meeting which was announced in the september 25, 1986, **Federal Register** is modified to add a discussion on the "District Court Decision's Relationship to the Round One Montana Leases."

DATE: Public comments on the Proposed Data Adequacy Standards are requested by January 6, 1986. The discussion of the "District Court Decision's Relationship to the Round One Montana Leases" will take place during the Powder River Regional Coal Team Meeting on December 4, 1986.

ADDRESS: Copies of the Proposed Data Adequacy Standards may be obtained

upon request from either Don Brabson, Powder River Project Manager, Branch of Solid Minerals, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001; telephone (307) 772–2571 or (FTS) 328–2571 or Al Pierson, Powder River Resource Area Manager, Bureau of Land Management, Miles City Plaza, Miles City, Montana 59301; telephone (406) 232–7000.

Comments on these Standards are to be submitted to Don Brabson at the above address.

FOR FURTHER INFORMATION CONTACT: Don Brabson at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Proposed Data Adequacy Standards contain recommended levels of data to be acquired prior to the leasing of delineated coal tracts. Data adequacy standards are proposed for geology, soils, hydrology, wildlife, air, cultural resources, economics and social, and land-use, within the Powder River Coal Region. This effort was prepared by a multidesciplinary task force composed of Federal and State resoruce specialists. This task force was appointed and guided by the Powder River Regional Coal Team. The preparation, with public input, of regional data adequacy standards is consistent with Secretary of the Interior Hodel's recent decisions to supplement the Federal Coal Management Program.

The Regional Coal Team welcomes comments on any aspects of these standards and is especially interested in public comments concerning the extensiveness and appropriate tiering for data adequacy standards. Of particular concern within the Team is whether or not the suggested level of data would be more appropriate in some cases (i.e., soils, wildlife, hydrology, and air quality) to the mine permit tier. Lastly, the Team would like public comment on whether a matrix, which typifies the kinds of data acquired during the land use planning, activity planning and mine permitting tiers, would clarify the Bureau's tiered approach to data collection and Federal coal management decision-making. Such a matrix could be included in the final report, if the public considers it worthwhile.

During the Regional Coal Team meeting on December 4, 1986, the Team will discuss the U.S. District Court of Montana decision of October 6, 1986, in The Northern Cheyenne Tribe vs. Hodel (CV82–116–BLG–JFB). If appropriate, the Team may develop a recommendation for compliance with this Court Order. Public input opportunities will be provided on this and all other Regional Coal Team meeting agenda items.

Hillary A. Oden,

State Director.

[FR Doc. 86–26709 Filed 11–25–86; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–713282

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male and one female captive born cheetah (*Acinonyx jubatus*) from the National Zoological Gardens in Pretoria, South Africa for the purpose of breeding. These cheetahs will be included as a part of the SSP program.

PRT–713584

Applicant: Exotic Cats of Georgia, Atlanta, GA.

The applicant requests a permit to buy one captive born female margay (*Felis pardalis*) from Danny Treanor, Orlando, Florida, for breeding with two male margays which are owned by the applicant.

PRT–713643

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import one male captive born musk deer (*Moschus moschiferus moschiferus*) from the Leipzig Zoo in East Germany. This male will be paired with females as they become available in order to establish a captive breeding population in North America.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service fo the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 19, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86–26618 Filed 11–25–86; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–284 (Final)]

Bicycle Tires and Tubes From Korea

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: As a result of an affirmative redetermination by the U.S. Department of Commerce that imports from Korea of bicycle tires and tubes manufactured by Hung-A, provided for in items 772.48 and 772.57 of the Tariff Schedules of the United States, respectively, were being subsidized by the Government of Korea, the Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–284 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports. The Commission will make its final injury determination by February 19, 1987 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202–523–0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

In a 1979 countervailing duty investigation, the Treasury Department

issued a countervailing duty order covering only one of three Korean manufacturers of bicycle tires and tubes. The petitioner in this investigation, the Carlisle Tire and Rubber Co., initiated a suit challenging Treasury's negative determination on the other two manufacturers, Hung-A and Dae Yung. On September 11, 1981, the Court of International Trade remanded Treasury's negative determination to the Department of Commerce for redetermination. On March 3, 1982, Commerce sent its remand results to the Court, with an above de minimis rate for Hung-A, and a de minimis rate for Dae Yung. The Court affirmed Commerce's redetermination on October 6, 1983.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good causes shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on December 30, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 13, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 26, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 31, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 9, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 20, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 20, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 19, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26700 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Certain Luggage Products; Commission Decision Not To Review Initital Determinations Terminating Two Respondents on the Basis of Consent Orders; Kingsport International Corporation, et al.

AGENCY: International Trade Commission.

ACTION: Nonreview of intital determinations terminating the investigation as to two respondents on the basis of consent orders.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations (IDs) granting joint motions to terminate the investigation as to respondents Kingport International Corporation (Kingport) and Monarch Luggage Company, Inc. (Monarch) on the basis of consent orders.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

SUPPLEMENTARY INFORMATION: On February 12, 1986, Lenox, Incorporated (Lenox) through its Division Hartmann Luggage Company (Hartmann) filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain luggage products. The Commission's notice of investigation divided Lenox's allegations into the following alleged unfair acts: (1) Violation of section 43(a) of the Lanham Act; (2) common law trademark infringement; (3) trademark dilution; (4) trade dress misappropriation; (5) passing off; and (6) unfair competition. 51 Fed. Reg. 10580 (March 27, 1986). The notice of investigation listed twelve respondents which were alleged to be in violation of section 337.

On October 2, 1986, complainant Lenox, through Hartmann, and respondent Kingport filed a joint motion (Motion No. 243–27) to terminate the investigation as to Kingport on the basis of a proposed consent order. On October 3, 1986, complainant Lenox, through Hartmann, and respondent Monarch filed a joint motion (Motion No. 243–30) to terminate the investigation as to Monarch on the basis of a proposed consent order.

On October 17, 1986, the presiding administrative law judge (ALJ) issued two ID (Orders Nos. 49 and 50) granting the joint motions and terminating the investigation as to Kingport and Monarch, respectively, on the basis of consent orders. No petitions for review or comments from the public or Government agencies concerning the ID's were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–1626. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: November 18, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–26703 Filed 11–25–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–243]

Certain Luggage Products; Commission Determination Not To Review Initial Determination Finding Respondent in Default; Pei Lin Leather Products of Taiwan

AGENCY: International Trade Commission

ACTION: Nonreview of initial determination (ID) finding respondent in default and imposing procedural sanctions.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) ID finding respondent Pei Lin Leather Products of Taiwan (Pei Lin) in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0261

SUPPLEMENTARY INFORMATION: On August 18, complainant Lenox Inc., filed a motion (Motion No. 243–13) requesting that respondent Pei Lin be found in default. On August 20, 1986, the ALJ issued an order (Order No. 22) ordering Pei Lin to show cause why a finding of default should not be made. Pei Lin did not respond to Order No. 22. On October 21, 1986, the ALJ issued an ID (Order No. 53) finding respondent Pei Lin in default pursuant to Commission rule § 210.25 (19 CFR 210.25). The ALJ ruled that Peil Lin has waived: (1) Its right to appear in the investigation; (2) its right to be served with documents by any party; and (3) its right to contest the allegations at issue. No petitions for review of the ID were received nor were any agency comments received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information of this mater can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: November 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–26704 Filed 11–25–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–243]

Certain Luggage Products; Initial Determination Terminating Respondent on the Basis of Settlement Agreement; Pungkook Industrial Co., Ltd.

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Pungkook Industrial Co., Ltd. (Pungkook).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 20, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be derected to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: November 20, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR. Doc. 86–26702 Filed 11–25–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731-TA-349 (Preliminary)]

Certain Welded Carbon Steel Pipes and Tubes From Taiwan

Determination

One the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Taiwan of light-walled rectangular pipes and tubes [3] which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On October 2, 1986, a petition was filed with the Commission and the Department of Commerce by counsel for the Committee on Pipe and Tube Imports (CPTI), alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of light-walled rectangular pipes and tubes from Taiwan. Accordingly, effective October 2, 1986, the Commission instituted preliminary antidumping investigation No. 731-TA-349 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 16, 1986 (51 FR 36873). The conference was held in Washington, DC, on October 27, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 17, 1986. The views of the Commission are contained in USITC Publication 1906 (November 1986), entitled "Certain Carbon Steel Pipes and Tubes from Taiwan: Determination of the Commission in Investigation No. 731-TA-349 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: November 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26707 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler makes a negative determination.

[3] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes or rectangular (including square) cross section, having a wall thickness less than 0.156 inch, provided for in item 610.4928 of the Tariff Schedules of the United Stats Annotated (TSUSA).

[Investigation No. 731-TA-326 (Final)]

Frozen Concentrated Orange Juice From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-326 (Final) under section735(b) of the Tarff Act of 1930 (19 U.S.C. 1673(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of frozen concentrated orange juice, provided for in item 165.29 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce has extended this investigation pursuant to section 735(a)(2) of the act and will make its final LTFV determination on or before March 9, 1987; the Commission will make its final injury determination by April 22, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh (202-523-0283), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of frozen concentrated orange juice from Brazil are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on May 9, 1986, by Florida Citrus Mutual, an association of growers of citrus fruit for processing. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 24238, July 2, 1986).

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on February 27, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 12, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 2, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 5, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 9, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 19, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 19, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published purusant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 17, 1986.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26701 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-265 (Final) and 731-TA-297-299 (Final)]

Porcelain-on-Steel Cooking Ware From Mexico, the People's Republic of China, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 167d(b)), that an industry in the United States is materially injured by reason of imports from Mexico of cooking ware of steel, enameled or glazed with vitreous glasses (porcelain-on-steel) other than teakettles, provided for in item 654.08 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Mexico. The Commissioner determines [3] that an industry in the United States is not materially injured or threatened with material injury, nor is the establishment of an industry materially retarded by reason of imports from Mexico of porcelain-on-steel teakettles, provided for in item 654.08 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Mexico.

Further, the Commission determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. (1673d(b)), that an industry in the United States is materially injured by reason of imports from Mexico, the People's Republic of China, and Taiwan of porcelain-on-steel cooking ware, provided for in item 654.08 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). Because Commerce made an affirmative final critical circumstances determination with regard to imports from one Mexican producer, the Commission is required to make an additional finding. Pursuant to section 735(b)(4)(a), the Commission unanimously determined that there is not material injury by reason of massive imports of the subject LTFV merchandise over a short period of time to the extent that it is necessary to impose the duty retroactively.

Background

The Commission instituted investigation No. 701-TA-265 (Final) effective March 4, 1986, following a preliminary determination by the Department of Commerce that imports of porcelain-on-steel cooking ware from Mexico were being subsidized within the meaing of section 701 of the Act (19 U.S.C. 1671). The Commission instituted investigations 731-TA-297-299 (Final) effective May 20, 1986, following preliminary determinations by the Department of Commerce that imports of porcelain-on-steel cooking ware from Mexico, the People's Republic of China, and Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of April 9, 1986 (51 FR 12220) and of June 25, 1986 (51 FR 23164). The hearing was held in Washington, DC, on October 9, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 17, 1986. The views of the Commission are contained in USITC Publication 1911 (November 1986).

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[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes, Lodwick, and Rohr made affirmative determinations. Chairman Liebeler, Vice Chairman Brunsdale, and Commissioner Stern determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports from Mexico which are being subsidized. Pursuant to 19 U.S.C. 1677(11) (1980), when the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.

[3] Commissioners Eckes and Lodwick dissenting.

[4] Commissioner Rohr dissenting with respect to imports of porcelain-on-steel teakettles.

entitled "Porcelain-on-Steel Cooking Ware from Mexico, the People's Republic of China, and Taiwan: Determinations of the Commission in Investigations Nos. 701–TA–265 (Final) and 731–TA–297–299 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: November 17, 1986.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–26705 Filed 11–25–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–267 and 268 (Final)]

Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigations Nos. 701–TA–267 and 268 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Taiwan of cooking ware of stainless steel, including skillets, frying pans, omelette pans, sauce pans, double boilers, stock pots, dutch ovens, casseroles, steamers, and simiar stainless steel vessels (but not including teakettles), all the foregoing for cooking on stove-top burners,[1] provided for in item 653.94 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in its final determinations, to be subsidized. On April 24, 1986, Commerce published in the **Federal Register** its negative preliminary determinations that imports of the product from Korea and Taiwan were not being subsidizing. The Commission will make its final injury determinations 75 days after receipt of Commerce's notification of its determinations (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 21, 1986.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–523–0165), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of final affirmative determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, procedures, or exporters in Korea and Taiwan of top-of-the stove stainless steel cooking ware. These investigations were requested in a petition filed on January 21, 1986, buy counsel on behalf of the Fair Trade Committee of the Cookware Manufacturers Associations, Walworth, Wisconsin. In response to that petition the Commission couducted preliminary countervailing duty investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 9541, March 19, 1986).

Participation in the investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report was placed in the public record on November 10, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing on related antidumping investigations, Top-of-the-stove stainless steel cooking ware from Korea and Taiwan, Invs. Nos. 731–TA–304 & 305 (Final), beginning at 9:30 a.m. on November 24, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. At that hearing the Commission will hear testimony and receive evidence regarding the countervailing duty investigations instituted herein. Requests for a separate hearing in these investigations, for the limited purpose of supplementing the November 24, 1986, hearing record with testimony and evidence solely related to the countervailing duty investigations, should be field in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 11, 1986. If such a hearing is requested, it will be held on Wednesday, December 17, 1986, at 9:30 a.m. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 15 in room 117 of the U.S. Internatioal Trade Commission Building. The deadline for filing prehearing briefs is December 15, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures

[1] The products are made of stainless steel and may either have plain bottoms or contain one or more layers of aluminum, copper, or carbon steel formore even heat distribution.

described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (29 CFR 207.24) and must be submitted not later than the close of business on December 24, 1986. In addition, any person who has not entered an appearance as a aprty to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before December 24, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 21, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-26706 Filed 11-25-86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Task Force on Economic Adjustment and Worker Dislocation; Meeting

Notice is hereby given that the Task Force on Economic Adjustment and Worker Dislocation will hold its seventh meeting at 10:00 a.m. on Thursday, December 11, 1986, in Room C-5515—Seminar Room 6, 200 Constitution Avenue, NW., Washington, DC 20210. The public is invited to attend.

The purpose of the meeting is to discuss the finalized draft outline of the Task Force report.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Holmes, U.S. Department of Labor, Room S-5317, Washington, DC 20210, (202) 523-6227.

Signed at Washington, DC, this Thursday of November 20, 1986.

Michael E. Baroody,

Assistant Secretary for Policy

[FR Doc. 86-26592 Filed 11-25-86; 8:45 am]

BILLING CODE 4510-23-M.

Employment and Training Administration

Targeted Jobs Tax Credit Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of the reauthorization of the Targeted Jobs Tax Credit program.

SUMMARY: The Targeted Jobs Tax Credit (TJTC) program offers employers a credit against their tax liability for hiring individuals from nine target groups who have traditionally had difficulty in obtaining and holding jobs. The TJTC program, had expired on December 31, 1985, but, by statute, has now been reinstated through December 31, 1988. This notice gives further guidance on the operation of the TJTC program.

FOR FURIHER INFORMATION CONTACT: Mr. Clayton J. Cottrell, Planning and Operations, Employment and Training Administration, U.S. Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0192.

For general TJTC program information contact: Nearest office of the State Employment Security Agency, usually listed in the telephone directory under State Government, Employment Security Commission, Employment and Training, or Job Service.

SUPPLEMENTARY INFORMATION: The Tax Reform Act of 1986 has reauthorized the Targeted Jobs Tax Credit program for a three-year period, through December 31, 1988, for the same nine target groups as were authorized in the most recent prior legislation. The groups are as follows:

—*Economically disadvantaged summer youth employees* who are 16 or 17 years of age on the hiring date and who have not previously worked for the employer;

—*Youth aged 18 through 24* from economically disadvantaged families (the definition of "economically disadvantaged" varies with location);

—*Youth aged 16 through 19* from economically disadvantaged families, who participate in a qualified cooperative educational program;

—*Handicapped persons* referred to the employer from state vocational rehabilitation or Veterans' Administration programs;

—*Vietnam-era veterans* who are economically disadvantaged;

—*Ex-Offenders* who are economically disadvantaged and hired no later than five years after release from prison or date of conviction, whichever is more recent;

—*Recipients of Aid to Families with Dependent Children* (AFDC) who are eligible for AFDC on the hiring date and have received it for 90 days immediately prior to being hired, and participants in the Work Incentive (WIN) program;

—*Recipients of Federal Supplemental Security Income* (SSI);

—*Recipients of state and local general assistance payments for* at least 30 days.

Procedural guidance in the form of an Employment Service Program Letter (ESPL) No. 1-87 was issued by the U.S. Department of Labor, Employment and Training Administration, to State Employment Security Agencies on November 4, 1986. The ESPL, in pertinent part, is set forth below:

1. *Purpose.* To provide guidance in implementing the Targeted Jobs Tax Credit (TJTC) program as reauthorized by the Tax Reform Act of 1986.

2. *Reference.* The Internal Revenue Code of 1954; The Tax Reduction and Simplification Act of 1977; The Revenue Act of 1978; The Technical Corrections Act of 1979; The Economic Recovery Tax Act of 1981; The Tax Equity and Fiscal Responsibility Act of 1982; The Technical Corrections Act of 1982; The Deficit Reduction Act of 1984; The Tax Reform Act of 1986; ET Handbook #377, 3rd Edition.

3. *Background and Information.* The Tax Reform Act of 1986, signed into law on October 22, 1986, reauthorized the TJTC program for a three-year period for the same nine target groups authorized in the most recent prior legislation.

The operation of the TJTC program has been altered many times since it was initiated in 1978, due to the legislation referenced in section 2, rulings from the Internal Revenue Service (IRS), and policy decisions from the Department of Labor.

The Secretary of Labor and the Secretary of Treasury are jointly responsible under the law, as amended, for administration of the TJTC program. By agreement with the Secretary of Treasury, the Secretary of Labor

provides guidance and oversight to the State Employment Security Agencies (SESAs) about processing, determination of eligibility and certification of applicants to employers, as well as compliance review, and reports to the Congress. The IRS is responsible for granting the tax credit to employers and for enforcement.

According to the Economic Recovery Tax Act of 1981 (ERTA), the SESAs are the designated agencies responsible for certification processing under TJTC. Responsibilities and program operations remain essentially the same as described in Employment and Training Handbook No. 377, 3rd Edition (ET Handbook).

Procedures for resolving policy questions or appeals will remain as described in the ET Handbook. Page changes to the ET Handbook incorporating all provisions of the new legislation will be issued without undue delay. The changes may update formats or reporting procedures, or clarify other policy issues.

4. *Major Changes.* The following subparagraphs outline additional changes under the new legislation.

a. Amount of Credit. The TJTC for first year wages is limited to 40 percent of up to $6,000 earned (maximum credit $2,400). Tax Credit for second year wages is eliminated. Wages paid during the retention period (See b. below) apply if the minimum retention requirement is met. Credit for economically disadvantaged summer youth employees remains at 85 percent of up to $3,000, for a maximum credit of $2,550 for each individual.

b. A minimum employment period (Retention Period) of 90 days or 120 hours of paid employment (14 days or 20 hours in the case of economically disadvantaged summer youth employees) is required before the employer can claim the tax credit.

5. *Certification.* Guidance on determining the timeliness of requests for certification has been given in the ET Handbook which describes the provisions of sections 7502 and 7503 of the Internal Revenue Code of 1954 (the Code), and the implementing IRS regulations at 26 CFR 301.7502–1 and 301.7503–1. The ET Handbook applies to determinations of timeliness for documents filed under the Code, which includes written requests for certification under the TJTC program for employees who began work on or before December 31, 1985, and on or after October 22, 1986.

Under section 51(d)(16)(A) of the Code, an individual generally is treated as a member of a targeted group only if, on or before the day such individual begins work for an employer, the employer has received or requested in writing a certification from a designated local agency that such individual is a member of a targeted group. If, however, on or before the day such individual begins work for the employer, such individual has received from a designated local agency a written preliminary determination (voucher) indicating membership in a targeted group, that individual is treated as a member of a targeted group if, on or before the fifth day after beginning work for the employer, the employer has received or has requested in writing the certification from a designated local agency. For either of these situations, the date that the certification is required by the law to be received or requested by the employer is hereafter defined as the "statutory filing date" by which certifications must be requested in writing to be timely filed.

In accepting or processing requests for certification for employees beginning work during the period from January 1 through October 21, 1986 the following examples describe "timely filing."

Example 1. During the period from January 1, 1986, through October 21, 1986 (the Retroactive Period) the employer hires a TJTC-eligible person and places in the U.S. mail a written request for certification, properly addressed to the State agency, or hand delivers a written request prior to the statutory filing date, and such request for certification is on file with the State agency. This is a timely filing.

Example 2. During the Retroactive Period the employer hires a TJTC-eligible person and places in the U.S. mail, uses a Mailgram, or delivers to the State agency, a written request for certification prior to the statutory filing date and the State agency returned, discarded, or otherwise disposed of such request.

The request shall be deemed to have been timely filed only if the employer provides clear and convincing documentary evidence of such timely filing, such as the original written request and postmark, dated certificate of mailing, or State agency date stamp, or a photcopy thereof.

Example 3. During the Retroactive Period the employer hires a TJTC-eligible person, but is told by the State agency (or the employer otherwise decides on its own) that no request for certification should be filed or that no such request will be accepted by the State agency. As a result, the employer does not file a written request for certification to the proper State agency prior to the statutory filing date. Any later filing with respect to that hire is not a timely filing, even if the State agency's and/or the employer's action was based on a perception that the TJTC program had expired.

In general, if the envelope containing the request, or if a Certificate of Mailing from the Post Office, is postmarked with a date no later than the statutory filing date, the filing would be timely. For registered mail, the date of registration is permissible. For privately metered mail, a more detailed rule, discussed on page 33 of ET Handbook, applies. If the request is hand-delivered to the State agency, any dated receipt or State agency dated log entry would indicate whether the filing was timely.

With respect to issues other than timeliness of filing, as set forth in the above 3 examples, the ET Handbook will apply to the processing of requests for certification filed during the retroactive period.

6. *Funding.* The Continuing Resolution for 1987 (PL 99–500) authorizes use of funds granted for Program Year (PY) 1986 under Section 6, Wagner-Peyser Act, to carry out the TJTC program. These funds have already been allocated to States.

7. *Economically Disadvantaged.* Where appropriate, the Lower Level Standard Income Levels (LLSIL), issued by the U.S Department of Labor in the **Federal Register** of June 11, 1985, (50 FR 24508) are to be used in determining eligibility for those beginning work before April 30, 1986. The updated LLSIL issued in the **Federal Register** of April 15, 1986 (51 FR 12752) are to be used in determining eligibility for those beginning work or being vouchered on or after April 30, 1986.

8. *Certification Format.* SESAs should inform each employer who receives a TJTC certification of the required minimum employment period. Enforcement of the requirement is between the employer and the IRS. The necessary information can be provided by the SESA with the following statement given in writing with each TJTC certification:

> Under the provisions of the Tax Reform Act of 1986, employers must attest to the IRS when claiming the TJTC that each targeted group member either was employed by the employer for at least 90 days (14 days in the case of qualified summer youth employees), or has completed at least 120 hours of work performed for the employer (20 hours in the case of qualified summer youth employees).

The U.S. Department of Labor is no longer requiring States to use the ETA forms 8468, 8469, and 8470 for the eligibility Voucher, Applicant Characteristics data, and Employer

Certification. Instead States may develop their own documentation.

9. *Reporting.* No changes in reporting requirements are anticipated at this time. The National Office is in the process of requesting approval from the Office of Management and Budget (OMB) to reinstitute the same reporting procedures as described in the ET Handbook, subject to OMB review of the ET Handbook update.

10. *Records.* Records retention procedures will remain as described in the ET Handbook.

11. *Publicity.* Department of Labor Fact Sheet on the TJTC is being issued.

12. *Action Required.* SESAs should immediately provide the above information to appropriate staff and TJTC or other appropriate units and participating agencies, and notify employers that the TJTC program is reestablished.

13. *Inquiries.* Direct questions to the appropriate ETA Regional Office.

Signed at Washington, DC, this 20th day of November, 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

[FR Doc. 86-26593 Filed 11-25-86; 8:45 am]

BILLING CODE 4510-30-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for MSPB Report on Federal Employee Involvement Systems

AGENCY: Merit Systems Protection Board.

ACTION: Notice of call for riders for MSPB report, *Getting Involved: Improving Federal Management With Employee Participation.*

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that, due to an unanticipated number of requests for copies, the Merit Systems Protection Board (MSPB) is again printing a limited number of copies of a recent report titled, *Getting Involved: Improving Federal Management With Employee Participation.* This report identifies the major systems, policies, or procedures in place within the 22 largest Federal departments or independent agencies which allow or encourage employees to identify or help resolve agency related problems. Federal departments and agencies may order copies of this report by riding MSPB's printing requistion #7-00060 with the Government Printing Office.

DATE: Agency requisitions (Standard Form 1) must be submitted no later than January 5, 1987.

ADDRESS: Interested departments and agencies should send requisitions—through their Washington, DC headquarters office authorized to procure printing—to the Government Printing Office, Requisitions Section, Room 836, Washington, DC 20401.

Agencies may estimate cost by using the current Government Printing Office price list of printing services and the printing information contained in the "supplementary information" section below.

FOR FURTHER INFORMATION CONTACT: John M. Palguta, Director, External Review and Studies Division, MSPB, 1120 Vermont Avenue NW., Washington, DC 10419, 202-653-8900.

SUPPLEMENTARY INFORMATION: This is one of a series of reports produced by the Board under its statutory authority to conduct special studies of the civil service system. Reports of those studies are addressed to Congress and the President. This particular report is based upon a study designed to compile information on systems, policies, or procedures identified by each major Federal department and agency as one which they have in place and which allows or encourages employees to identify or help resolve agency related problems. The report was first released on September 18, 1986. Requests for copies of the report recently exceeded the number initially printed. This second printing is intended to satisfy any additional requests.

The report discusses Quality Circles, Suggestion Programs, Hotlines, and a number of other programs and systems which are unique to particular agencies. All of the identified programs and systems have the potential to foster constructive employee involvement. Telephone numbers for the responsible offices in each agency are provided so that the report may serve as a resource document for interested parties. This 124 page, bound report is printed in one color ink on 8½x11 inch paper. The cost per copy will depend on the volume of agency orders.

Dated: November 20, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-26600 Filed 11-25-86; 8:45 am]

BILLING CODE 7400-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482]

Kansas Gas & Electric Co., Kansas City Power & Light Co., Kansas Electric Power Cooperative, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of footnote d-2(c) of Appendix A to 10 CFR Part 20, to the Kansas Electric Power Company, Kansas City Power & Light Company, and Kansas Electric Cooperative, Inc., (the licensee) for the Wolf Creek Generatings Station located at the licensee's site in Coffey County, Kansas.

Environmental Assessment

Identification of Proposed Action

The exemption would relax the requirement in Footnote d-2(c) of Appendix A to 10 CFR Part 20 which states, "No allowance is to be made for the use of sorbents against radioactive gases or vapor." The exemption would allow the use of a radioactive protection factor of 50 for certain respiratory protection canisters used by workers at the licensee's Wolf Creek facility. The staff's technical evaluation of this request will be published in a report entitled "Safety Evaluation Report Related to the Use of Radioiodine Protection Factor for Sorbent Canisters at Wolf Creek."

The exemption is responsive to the licensee's application for exemption dated July 1, 1985, as supplemented by letters dated November 8, 1985 and May 6, 1986.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request are potential means to reduce occupational exposure to radiation for some tasks at the Wolf Creek facility.

Environmental Impact of the Proposed Action

The proposed exemption will most likely reduce the work effort and occupational exposure for some tasks at the Wolf Creek facility. As stated in the staff's Safety Evaluation Report:

> The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 30% for tasks requiring radioiodine protection, in a range of from 25% to 50% for several major tasks. The light weight, less

cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on-the-job. The licensee has provided a task analysis which shows that the use of sorbent canisters at Wolf Creek can result in significant dose savings and should be an effective ALARA measure.

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect the potential for or consequences of radiological accident and does not affect radiological plant effluents. The exemption has no effect on non-radiological impacts of facility operation. Therefore, the Commission concludes that there are no significant environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for the Wolf Creek Generating Station.

Agencies and Persons Consulted

The NRC Staff reviewed the licensee's request and consulted with an NRC contractor at Los Alamos National Laboratory.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the enviornmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated July 1, 1985, as supplemented November 8, 1985, and May 6, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the William Allen White Library, Emporia State University, Emporia, Kansas, and at the Washburn University School of Law Library, Topeka, Kansas.

Dated at Bethesda, Maryland, this 19th day of November 1986.

For the Nuclear Regulatory Commission

B.J. Youngblood,

Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 86-26688 Filed 11-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-366]

Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing; Georgia Power Co., et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. NPF-5 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2 located in Appling County, Georgia.

The amendment would modify the Technical Specification Sections related to operability requirements for the Main Control Room Environmental Control System (MCRECS) to (1) delete the requirement for automatic actuation of the control room pressurization mode of operation of the MCRECS upon receipt of a low-low reactor vessel water level signal, (2) change the requirement for automatic actuation of the control room pressurization mode of the MCRECS upon receipt of a high radiation signal in the refueling floor exhaust to require automatic actuation based on a high radiation signal in the refueling floor area (i.e., the word "exhaust" would be replaced by the word "area"), (3) change the location and format of the requirements related to the operability of the MCRECS to clarify and facilitate their use, (4) correct errors in the identification numbers listed for instrumentation that provides actuation signals for operation of the MCRECS, and (5) augment the MCRECS applicability requirements (Operational Conditions for which the MCRECS is required to be operable) to include additional Operational Conditions.

Proposed changes (1) and (2) above are needed to make the Technical Specifications compatible with the existing plant design and the design as described and evaluated in the Hatch Unit 2 Final Safety Analysis Report.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

With respect to change (1), the existing Technical Specification requires that the control room pressurization mode of MCRECS operation be automatically actuated upon receipt of a low-low (Level 2) reactor vessel water level signal and upon receipt of a low-low-low (Level 3) reactor vessel water level signal. The Standard Review Plan and the Standard Technical Specifications do not specify a requirement for actuation of the control room pressurization mode based on low reactor vessel water level. Thus removal of one of the two actuation requirements based on low reactor vessel water level is acceptable. In addition, the existing Technical Specification also requires actuation of the control room pressurization mode based on high drywell pressure. Thus the remaining low-low-low reactor vessel water level together with this high drywell pressure actuation requirement continue to provide diverse LOCA signal actuation of the control room pressurization mode, and the elimination of the redundant reactor vessel water level actuation requirement does not significant change the safety margin provided by the current Technical Specification requirements.

With respect to change (2), the location of the radiation monitors that will actuate the control room pressurization mode of MCRECS operation will be area radiation monitors and will be located in the refueling floor area close to the exhaust ducts rather than inside the ducts as currently required. Because these area radiation monitors will be in a direct line of sight to the refueling pool surface, they should respond to direct radiation from any bubbles that rise to the top of the pool and therefore should provide quicker actuation of the pressurization mode of operation than would the currently required monitor inside the

exhaust ducts which has less exposure to direct radiation. In addition, because the area radiation monitors will be located close to the exhaust ducts they should detect any radioactive gases that would be detected by monitors located inside the ducts. Therefore, the proposed requirement is essentially equivalent and possibly provides improved detection of radioactive releases and actuation of the control room pressurization mode.

Changes (3) and (4) do not modify any current Technical Specification requirements. They change the location and format of information and correct instrument numbers related to MCRECS requirements.

Change (5) adds requirements (a) that the control room isolation mode of MCRECS operation shall be operable when the reactor is in the Cold-Shutdown Operational Condition and (b) that the MCRECS be operable when the reactor is in the Refueling Operational Condition and when irradiated fuel is being handled in the secondary containment. This addition should increase the safety of operation in these situations.

None of the above proposed modifications change the existing plant design or require modification of the accident analysis as described in the Hatch 2 Final Safety Analysis Report, nor do the proposed modifications change the manner in which the plant is operated. Accordingly, the changes are not expected to (1) increase the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On the basis of the above, the Commission has determined that the requested amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

By December 26, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make is effective, notwithstanding the request for hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last tne (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in

Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller, Director, BWR Project Directorate #2, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 18th day of November 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-26687 Filed 11-25-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445A and 50-446A]

Texas Utilities Electric Co. et al.; Receipt of Antitrust Information

Texas Utilities Electric Company, Brazos Electric Power Cooperative, Inc., Texas Municipal Power Agency and Tex-La Electric Cooperative of Texas have filed antitrust information in conjuction with their application for operating licenses for the Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County, Texas, approximately 40 miles southwest of Fort Worth, Texas. The data submitted contains antitrust information for review, pursuant to NRC Regulatory Guide 9.3, necessary to determine whether there have been any significant changes since the antitrust settlement of September 15, 1980.

On completion of a staff antitrust review, The Director of the Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act, as amended. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** Notice. The results of any reevaluation that are requested will also be published in the **Federal Register** and copies sent to the Washington, DC and local public documents rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and in the local public document room at the Somervell County Library, On the Square, P.O. Box 417, Glen Rose, Texas 76403.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which occurred since the antitrust settlement should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before December 26, 1986.

Dated at Bethesda, Maryland, this 20th day of November, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26689 Filed 11-25-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedule A, B, and C Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on October 28, 1986 (51 FR 39442). Individual authorities established or revoked under Schedule A, B, or C between October 1, 1986, and October 31, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception was established:

Department of the Army

Three positions of physical therapist that will function as athletic trainers at the United States Military Academy, West Point, New York. Effective October 9, 1986.

Schedule B

No Schedule B exceptions were established or revoked during October.

Schedule C

The following exceptions have been established:

Department of Agriculture

One Staff Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective October 6, 1986.

One Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective October 9, 1986.

One Private Secretary to the Deputy Assistant Secretary for Marketing and Inspection Services. Effective October 16, 1986.

One Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective October 17, 1986.

One Executive Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective October 30, 1986.

One Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective October 30, 1986.

One Private Secretary to the Administrator, Agricultural Marketing Service. Effective October 31, 1986.

Department of the Army

One Secretary (Steno) to the Assistant Secretary of the Army (Financial Management). Effective October 23, 1986.

Department of Commerce

One Director, Office of Consumer Affairs to the Director, Office of Public Affairs. Effective October 3, 1986.

One Special Assistant to the Assistant Secretary for Administration. Effective October 10, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Export Administration, International Trade Administration. Effective October 17, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Administration. Effective October 23, 1986.

One Congressional Affairs Specialist to the Congressional Affairs Advisor, Bureau of the Census. Effective October 27, 1986.

Deparment of Defense

One Staff Assistant to the Assistant Secretary of Defense. Effective October 6, 1986.

One Private Secretary to the Deputy Under Secretary of Defense. Effective October 22, 1986.

One Private Secretary to the Senior Judge, U.S. Court of Military Appeals. Effective October 28, 1986.

Department of Education

One Director, Adult Literacy Initiative to the Under Secretary. Effective October 3, 1986.

One Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective October 7, 1986.

One Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective October 7, 1986.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective October 8, 1986.

One Special Assistant to the Administrator for Management Services. Effective October 8, 1986.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education. Effective October 20, 1986.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective October 20, 1986.

One Staff Assistant to the Chief of Staff/Counselor to the Secretary. Effective October 20, 1986.

One Special Assistant to the Deputy Under Secretary for Management. Effective October 31, 1986.

Department of Energy

One Staff Assistant to the Secretary. Effective October 9, 1986.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective October 9, 1986.

One Staff Assistant to the Director of Energy Research. Effective October 9, 1986.

One Confidential Assistant (Secretary) to the Special Assistant to the Secretary. Effective October 10, 1986.

One Staff Assistant to the Assistant Secretary for International Affairs and Energy Emergencies. Effective October 23, 1986.

One Secretary (Confidential Assistant) to the Assistant Secretary for Fossil Energy. Effective October 24, 1986.

One Legal Advisor to a Member of the Federal Energy Regulatory Commission. Effective October 27, 1986.

Department of Health and Human Services

One Director, Office of Public Affairs to the Assistant Secretary for Human Development Services. Effective October 9, 1986.

One Director, Division of Legislative Services and Congressional Affairs to the Director, Office of Legislation and Policy, Health Care Financing Administration. Effective October 10, 1986.

One Director, Division of Legislation to the Director, Office of Legislation and Policy, Health Care Financing Administration. Effective October 10, 1986.

One Special Assistant for Liaison Activities to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration. Effective October 10, 1986.

One Confidential Secretary to the Assistant Secretary for Legislation. Effective October 24, 1986.

One Special Assistant to the Director, Office of Civil Rights. Effective October 24, 1986.

Department of Housing and Urban Development

One Executive Assistant to the General Deputy Assistant Secretary for Housing. Effective October 15, 1986.

One Staff Assistant to the Executive Assistant to the Secretary. Effective October 15, 1986.

One Staff Assistant to the Regional Administrator-Regional Housing Commissioner. Effective October 30, 1986.

Department of the Interior

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective October 21, 1986.

One Confidential Assistant to the Director, U.S. Fish and Wildlife Service. Effective October 30, 1986.

Department of Justice

One Confidential Assistant (Private Secretary) to the Assistant Attorney General, Criminal Division. Effective October 2, 1986.

One Secretary (Typing) to the Associate Attorney General. Effective October 14, 1986.

Department of Labor

One Staff Assistant to the Under Secretary. Effective October 7, 1986.

One Senior Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective October 7, 1986.

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective October 10, 1986.

One Secretary's Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective October 22, 1986.

One Secretary (Stenography) to the Assistant Secretary for Veterans' Employment and Training. Effective October 30, 1986.

Department of State

One Staff Assistant to the Deputy Secretary of State. Effective October 7, 1986.

One Deputy Coordinator to the Coordinator for Public Diplomacy for Latin America and the Caribbean. Effective October 8, 1986.

One Secretary (Steno) to the Executive Secretary/Special Assistant to the Secretary of State. Effective October 8, 1986.

One Foreign Affairs Officer to the Assistant Secretary, Bureau of International Organization Affairs. Effective October 15, 1986.

One Public Information Officer to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs. Effective October 24, 1986.

One Member, Policy Planning Council to the Chairman, Policy Planning Council. Effective October 24, 1986.

Department of Transportation

One Special Assistant to the Administrator, Federal Highway Administration. Effective October 8, 1986.

Department of the Treasury

One Deputy Assistant Secretary (Legislative Affairs) to the Assistant Secretary (Legislative Affairs). Effective October 2, 1986.

Agency for International Development

One Director, Office of Interbureau Affairs and Special Projects to the Deputy Assistant Administrator for External Affairs. Effective October 23, 1986.

Arms Control and Disarmament Agency

One Secretary (Typing) to the Assistant Director, Multilateral Affairs Bureau. Effective October 2, 1986.

One Secretary (Steno) to the Special Representative for Arms Control and Disarmament. Effective October 15, 1986.

Commission on Civil Rights

One Confidental Secretary to the Commissioner. Effective October 7, 1986.

Commodity Futures Trading Commission

One Special Assistant to the Commissioner. Effective October 8, 1986.

Federal Emergency Management Agency

One Confidential Assistant to the Associate Director, Emergency Operations Directorate. Effective October 22, 1986.

Federal Labor Relations Authority

One Staff Assistant to a Member. Effective October 14, 1986.

One Confidential Assistant to the Chairman. Effective October 30, 1986.

Federal Mine Safety and Health Review Commission

One Attorney-Adviser (General) to a Commissioner. Effective October 10, 1986.

One Confidential Secretary to the General Counsel. Effective October 10, 1986.

Federal Trade Commission

One Director, Office of Congressional Relations to the Chairman. Effective October 1, 1986.

General Service Administration

One Confidential Assistant to the Regional Administrator. Effective October 7, 1986.

One Confidential Assistant to the Director, Office of the Executive Secretariat. Effective October 8, 1986.

One Confidential Assistant to the Associate Administrator for Congressional Affairs. Effective October 14, 1986.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective October 1, 1986.

National Endowment for the Humanities

One General Counsel to the Chairman. Effective October 1, 1986.

Office of Managment and Budget

One Administrative Assistant to the Associate Director, Human Resources, Veterans and Labor. Effective October 17, 1986.

Office of Personnel Management

One Special Assistant to the Assistant Director for Congressional Relations. Effective October 1, 1986.

One Confidential Assistant (Typing) to the General Counsel. Effective October 20, 1986.

One Staff Assistant to the Counselor to the Director. Effective October 31, 1986.

Office of the U.S. Trade Representative

One Director, Office of Private Sector Liaison to the Assistant U.S. Trade Representative for Public and Intergovernmental Affairs. Effective October 16, 1986.

Pension Benefit Guaranty Corporation

One Secretary (Typing) to the Executive Director. Effective October 27, 1986.

President's Commission on Executive Exchange

Two Staff Assistants (Typing) to the Executive Director. Effective October 6, 1986.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective October 2, 1986.

Two Special Assistants to two Regional Administrators. Effective October 8, 1986.

One Special Assistant to the Associate Deputy Administrator for Special Programs. Effective October 24, 1986.

One Special Assistant to the Administrator. Effective October 24, 1986.

United States Tax Court

One Trial Clerk to a Judge. Effective October 23, 1986.

Authority: 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., P.218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 86–26630 Filed 11–25–86 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–23823; File No. SR–Amex–86–28]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to an Amendment to the Exchange Constitution To Reduce the Transfer Fee Applicable to Leases of Regular Memberships

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1) notice is hereby given that on October 27, 1986, the American Stock Exchange Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending Article VII, section 1(d) of the Exchange Constitution to reduce the transfer fee applicable to leases of regular memberships from $2,500 to $1,500.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects o such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is effecting a Constitutional amendment which addresses the disparity between the cost involved in leasing a regular membership as compared to an options principal membership. Currently regular members incur a $2,500 fee to lease their seats while OPMs pay only $500. This disparity will be reduced by lowering the fee payable on lease of a regular membership to $1,500.

Article VII, section 1(d) of the Constitution provides that the initiation fee for the transfer of a regular membership pursuant to a special transfer agreement is to be based upon a formula tied to the latest price at which a regular membership has been sold, but not to exceed $2,500. This cap is reached whenever memberships are selling at or above $20,000. Since the average price of a regular membership currently is $248,000, the fee payable upon transfer is always at the maximum of $2,500. In contrast, the same section provides that the initiation fee payable upon the special transfer of an options principal membership is only $500. The initiation fee upon transfer of options principal memberships was set at $500 in 1978, in part to reflect the value of options principal memberships at that time, and also to make them more attractive to member firms whom it was felt would have greater need to transfer such memberships among employees. Since then, however, the value of an OPM has increased significantly, and the current average price if approximately $180,000.

Subsequent to the initial sale of Options Principal Memberships, the Exchange membership adopted a plan permitting members—both OPMs and regular members to lease their memberships. The growth in leasing in recent years has tendered to highlight the discrepancy in the cost of transferring regular memberships as opposed to Options Principal Memberships With the view to narrowing such disparity the Exchange Constitution will be amended to reduce the transfer fee payable in connection with a lease of the regular membership to $1,500.[1] Such reduction will enhance the value of a regular membership and update the initiation fee structure in light of changing seat values. The initiation fee payable by a new member upon the purchase of a membership will remain as is.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general, and section 6(b)4 in particular, in that the reduction in the transfer fee for lease of a regular membership will provide for equitable dues, fees and other charges among Exchange members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and paragraph (e) of Securities Exchange Act Rule 19B–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 26673 Filed 11–25–85; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission recognizes that, under the existing Exchange Constitution, it would be technically possible to transfer a regular membership seat for less than $1,500 if the latest sale price of a seat was $5,000 or less. As noted above, however, because Exchange seats generally sell for much higher prices, the current transfer fee is always at the maximum of $2,500. Accordingly, in practice, the proposal results in a reduction of transfer fees from $2,500 to $1,500.

[Release No. 34–23811; File No: SR–CBOE–86–33]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Addition of One-Half Point Exercise Prices in Canadian Dollar Option Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 10, 1986 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would enable the Exchange to add one-half point exercise prices in Canadian dollar option contracts, either singly or at the

same time as the next exercise price is added.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to allow the listing of additional exercise prices in Canadian dollar currency option contracts. Because the Canadian dollar relative to the United States dollar is not volatile, few exercise prices are available for Canadian dollar options trading. The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in Canadian dollar currency option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 14, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26674 Filed 11-24-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

November 20, 1986.

The above named national securities exchange has filed applications with the Security and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Hanson Trust PLC
American Depository Receipts (File No. 7-9381)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26680 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

NV Homes L.P.
Units of Limited Partnership Interest (File No. 7-9382)
UNUM Corporation
Common Stock, $.10 Par Value (File No. 7-9383)
Lone Star Ind., Inc.
$5.375 Cumulative Convertible Preferred (File No. 7-9384)
Duke Realty Investments Inc.
Income Shares, $.01 Par Value (File No. 7-9385)
Schafer Value Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-9386)
Hanson Trust
American Depository Shares, No Par Value (File No. 7-9387)
Commercial Credit Co.
Common Stock $.01 Par Value (File No. 7-9388)
Motel 6 L.P.
Units Representing Limited Partnership Interests (File No. 7-9389)
Hanson Trust PLC
American Depository Shares (File No. 7-9390)
Danaher Corporation (Delaware)
Common Stock, $.01 Par Value (File No. 7-9391)

Harinschafeger Industries, Inc. (Holding Company)
Common Stock, $.01 Par Value (File No. 7–9392)
Premark International Inc.
Common Stock, $.10 Par Value (File No. 7–9393)
Raytech Corporation (Holding Company)
Common Stock, $1.00 Par Value (File No. 7–9394)
Cook United, Inc.
Common Shares, $.01 Par Value (File No. 7–9395)
The Clorox Company (Delaware)
Common Stock, $1.00 Par Value (File No. 7–9396)
United States Leasing International, Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7–9397)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant of delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26680 Filed 11–25–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23834; File No. SR–MSRB–86–14]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Uniform Practice and Confirmation, Clearance and Settlement of Customer Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1986, the Muncipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board ("Board") is filing an interpretation of rules G–12 on uniform practice and G–15 on confirmation, clearance and settlement of customer transactions (hereinafter referred to as "the proposed rule change") that clarifies the date as of which a notice of call is deemed to be published under the rules. The proposed rule change states that, in general, the publication date of a notice of call is the date of the edition of the publication in which the call notice is first published. The proposed rule change states that, to qualify as a notice of call under the rules, a notice of a partial call must identify the certificates that will be redeemed.

The proposed rule change also states that, if a notice of call for a registered security is not published, but is sent to registered owners, the publication date is the date shown on the notice. If no date is shown on the notice, the issuer, the trustee or the appropriate agent of the issuer must be contacted to determine the date of the notice of call. If a notice of call of a registered security is published and also is sent directly to registered owners, the publication date is the earlier of the actual publication date or the date shown on the notice sent to registered owners.

The full text of the proposed rule change is available for inspection and copying at the Commission's Public Reference Section and at the offices of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regualtory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Board rules G–12(e)(x) and G–15(c)(viii) on deliveries of called securities provide that a certificate for which a notice of partial call has been published does not constitute good delivery unless it was identified as called at the time of trade. The rules also provide that, if a notice of call affecting an entire issue has been published on or prior to the trade date, called securities do not constitute good delivery unless identified as such at the time of trade. An inter-dealer delivery that does not meet these requirements may be rejected or reclaimed under rule G–12(g). Thus, a dealer, in some instances, must determine the date that a notice of call is published (the "publication date") to determine whether delivery of a called certificate constitutes good delivery for a particular transaction.

The rationale of rules G–12(e)(x) and G–15(c)(viii) is that, once information becomes public concerning a specific issue or specific certificates of an issue being called, the industry can react to this information and trade the securities or deliver certificates accordingly. Consistent with this rationale, the proposed rule change states that, in general, the date of the edition of the publication in which the issuer, the issuer's agent or trustee for an issue first publishes a notice of call constitutes the publication date of the notice for the purposes of the rules. The proposed rule change also states that a notice of a partial call does not exist for purposes of the rules unless the specific certificates to be called are identified in the notice. Thus, an announcement that a specific percentage of an issue will be called does not constitute a notice of call because the certicates that will be redeemed cannot be determined from the announcement.

The proposed rule change also addresses several other questions that may arise in determining the publication date of call notices. Some notices of calls for registered securities generally are sent directly to registered bond owners and also are published. In some cases, however, call notices are sent to registered owners, but are not published. The proposed rule change states that, in such cases, the publication date for purposes of the rules is the date of the notice of call sent to registered owners, as shown on the notice. In the unusual case in which such a notice is not dated, the proposed rule change states that the publication date is determined by contacting the trustee, the issuer or an appropriate agent of the issuer to determine the date of the notice. Since a notice sent to registered owners may be the only means by which a call notice is made known, such a determination of publication date is consistent with the rationale of the rules G–12(e)(x) and G–15(c) (viii).

The Board also is aware that a call notice may be sent to registered bond owners and then published at a later date. The proposed rule change states that in such situations, for purposes of

rules G–12(e)(x) and G–15(c)(viii), the publication date is the earlier of the actual publication date or the date shown on the notice sent to registered owners. This conforms to the rationale of the rules since, if registered owners have call information prior to its publication, they may be able to act on that information.

The Board understands that registered securities depositories use a lottery system to allocate securities called pursuant to partial calls. The Board notes that depositories use the publication date of a notice of partial call as the date as of which securities in the depository are subject to the call lottery. The lottery process thus is similar to the operation of rules G–12(e)(x) and G–15(c)(viii). The Board believes that the proposed rule change is consistent with the procedures used by depositories to determine publication date and will provide for consistent treatment for physical and book-entry deliveries of called securities. The Board also believes that adoption of the proposed rule change will lessen the possibility of disputes involving delivery of called securities by clarifying the publication dates of call notices in certain situations.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, ("the Act") which requires and empowers the Board to adopt rules which are

> designed . . . . to foster cooperation and coordination with persons engaged in . . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general to protect investors and the public interest . . . .

The Board believes that the proposed rule change will further the purposes of the Act by clarifying situations in which called securities may properly be delivered, rejected or reclaimed under the Board's rules.

B. Self-Regulatory Organization's Statment on Burden on Competition

The Board believes that the proposed rule change would not impose any burden on competition since it applies uniformly to all brokers, dealers and municipal securities dealers and serves primarily to clarify existing rules on delivery of called securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chnage Received from Members, Participants, or Others.

The Board neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 20, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26675 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23820; File No. SR–NASD–86–31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Appendix E to the NASD's Rules of Fair Practice.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1986, the National Association of Securities Dealer, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Froposed Rule Change

The proposed rule change to section 2(e) of Appendix E of the Rules of Fair Practice makes it more clear that the definition of "options contract" is identical to the definition of option in section 33(d) of Article III of the Rules of Fair Practice.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Board of Govrnors approved rule change to make it clear that the definition of "options contract" in section 2(e) of Appendix E is identical to the definition of "option" in section 33(d) of Article III of the NASD's Rules of Fair Practice. The proposed rule change does not alter, amend or otherwise modify the substance of section 2(e), but simplifies the wording to enhance its clarity.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor

received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date or it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be approved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for insepction and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 17, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26676 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23818; File No. SR-NASD-86-27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Eligibility Criteria for Issuers of NASDAQ National Market System Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on September 26, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change add a new Part III to Schedule D of the NASD By-Laws that sets forth criteria for determining the NASD Securities for which there shal be real-time last sale reporting under the NASD's Transaction Reporting Plan.[1]

Under amendments to Rule 11Aa2-1 under the Securities Exchange Act of 1934 ("Act") concurrently being proposed by the Commission,[2] securities satisfying these criteria and subject, therefore, to real-time last sale reporting, would be designated as National Market System Securities. The criteria proposed by the NASD are essentially identical to the Tier II criteria currently found in Rule 11Aa2-1 and in the NASD's NMS Designation Plan. In addition, the NASD proposes to add to these criteria certain corporate governance requirements that have previously been published for comment.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes would amend Schedule D to the Association's By-Laws to incorporate certain provisions now found in the NASD National Market System Designation Plan or in Commission Rule 11Aa2-1. These changes are being made for the purpose of consolidating all NASDAQ National Market System rules into a single easily identifiable document and in response to the discussions with the Commission staff concerning proposed amendments to its Rules 11Aa2-1 and 11Aa3-1.[4] The NASD has proposed amendments to its currently effective transaction reporting plan which it seeks to have become effective upon approval of this rule filing and the appropriate amendments to the Commission rules.[5] Securities which have been designated as NASDAQ National Market System securities under current SEC Rule 11Aa2-1 will remain so designated upon approval of this rule change subject to either voluntary termination or termination based upon a lack of future compliance with the provisions of Part III.

Section 1 of the proposed rule change dealing with applications for national market system designation contains no substantive changes and is derived from the Association's currently effective designation plan. Provisions for granting exceptions to the criteria contained in Part III have been included to parallel currently existing language found in Part II relating to general NASDAQ criteria.

Section 2 dealing with quantitative designation criteria provides the currently effective "Tier 2" criteria from Commission Rule 11Aa2-1. The current "Tier 1" mandatory designation criteria of Rule 11Aa2-1 have been eliminated in that the Association believes that these criteria have served the purpose for which they were intended when adopted by the Commission in February of 1981 (See Release No. 34-17549). This

[1] The NASD, concurrent with this proposal, proposes to amend its Transaction Reporting Plan to incorporate by reference these eligibility criteria into that Plan. *See* Securities Exchange Release No. 23819 (November 17, 1986), published elsewhere in this issue of the **Federal Register**.

[2] *See* Securities Exchange Act Release No. 23817 (November 17, 1986), published elsewhere in this issue of the **Federal Register**.

[3] *See* Securities Exchange Act Release No. 22505 (October 7, 1985), 50 FR 41697. The proposed corporate governance standards would become effective 18 months after Commission approval.

[4] *See supra* note 2.

[5] *See supra* note 1.

purpose was to enable the Commission and the industry to "gain experience with transaction reporting for a limited number of OTC securities which have previously have not been subject to last sale trade reporting." Since that time, however, over 2,300 securities have become a part of NASDAQ/NMS and the Association no longer believes that Tier 1 serves a valid purpose given the wide spread acceptance of trade reporting for over-the-counter securities.

Section 3 of the proposed rule change dealing with registration requirements tracks the requirements currently contained in commission Rule 11Aa2-1a(2) and (3).

Section 4 of the proposed rule change sets forth the maintenance criteria currently contained in the Association's designation plan.

Section 5 of the proposed rule change incorporates, without change, the Association's NASDAQ/NMS corporate governance criteria which have previously been published for comment in filing SR-NASD-85-20.

Section 6 of the proposed rule change provides procedures for termination of designation for non-compliance with the requirements of sections 4 and 5.

These changes are consistent with section 15A(b)(6) of the Securities Exchange Act, which requires that NASD rules protect investors and the public interest and with section 11A(a) requiring the development of a national market system which enhances competition among markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule changes do not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments, on the Proposed Rule Change Received from Members, Participants or Others

The NASD solicited comments with respect to a general recodification of Schedule D. None of the comments received related to the proposed rule changes.

III. Dates of Effectiveness of the Proposed Rule Change in Timing of Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the Submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, an all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 16, 1986.

Dated: November 17, 1986.

By the Commission.

Jonathan Katz,

Secretary.

[FR Doc. 86-26558 Filed 11-24-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23824; File No. SR-OCC-86-22]

Self-Regulatory Organizations; Notice of Filings and Immediate Effectiveness of Proposed Rule Change of Options Clearing Corporation

On October 23, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing this notice to solicit comment on the rule change.

The proposal revises "Appendix A" of OCC's "Supplement to Agreement for OCC Services" ("Supplement"). The Supplement states the terms for clearing members' access to, and use of, OCC's on-line computerized communications service, known as C/MACS (Clearing Member Accounting and Control System).[1] Appendix A also sets forth the monthly charges to clearing members for access to, and use of C/MACS.

The proposal would add a monthly "personal computer dial-up access" fee of $200 to the Appendix A fee schedule. The proposal does not change OCC's fees for other means of C/MACS access, i.e., on-line leased line transmission with Direct Data Service (with or without tape) at $2,055 per month; and (2) on-line leased line transmission only, at $785 per month. OCC states that the proposed rule change is consistent with section 17A of the Act, and particularly Section 17A(a)(3)(D) of the Act, because the proposal provides for the equitable allocation of reasonable fees among OCC's participants.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register.** Persons making written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the filing, with accompanying exhibits and amendments, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also are available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-86-22 and should be submitted by December 17, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26677 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 20, 1986.

The above named national securities

[1] The Commission approved this "dial-up" access feature in Securities Exchange Act Rel. Nos. 22939 (February 24, 1986), 51 FR 7172, and 23589 (September 5, 1986), 51 FR 32712 (File Nos. SR-OCC-85-20 and 86-15, respectively).

exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

UNUM Corporation, Common Stock, $0.10 Par Value (File No. 7–9380)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26681 Filed 11–25–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23826; File No. PHLX 86–27]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Prompt Payment of Dues, Users' Fees, Fines and Other Charges

Pursuant to section 19(b)(1,) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)91), notice is hereby given that on August 25, 1986 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization, the Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("PHLX" or the "Exchange") proposes to amend its By-Law, Article XIV, section 14–5, and Rule 50 as set forth below. Italic indicate material proposed to be added; brackets indicate material proposed to be deleted.

Proposed Amendment of Exchange By-Law, Article XIV, Sec. 14–5:

Penalty for Non-payment

Second 14–5 A member who shall not pay his dues within three months after the same shall become payable or a foreign currency option participant who shall not pay any foreign currency options users' fees assessed against him within three months after the same shall be payable or a member or foreign currency options participant who shall not pay a fine within twenty days after the same shall become payable shall be reported by the Secretary to the Board of Governors and, after due notice, may be suspended by the Board of Governors until payment is made [.] *in full to the Exchange of such member's or participant's entire outstanding account balance of all dues, users' fees, or fines.*

Fines shall be payable on the day after their imposition. Should payment of dues, foreign currenty options users' fees and fines not be made within one year after payment is due, the membership or foreing currency options participation of the delinquent, as the case may be, may be disposed of by the Committee on Admissions upon at least ten days written notice mailed to him at his address registered with the Exchange.

Proposed Amendment of Exchange Rule 50:

Late Charge

Rule 50. There shall be imposed upon any member or member organization using the facilities or services of the exchange, or enjoying any of the privileges therein, a later charge until payment is received of dues, fees, fines, or other charges imposed by the Exchange and not paid within forty (40) days after notice thereof has been mailed. The amount of such late charge shall be fixed from time to time by the Board of Governors. If any member or member organization shall fail to pay such [dues, fees,] fines, *including late charge within twenty days after notice thereof has been mailed, or dues, fees,* or other charges, including late charges, within ninety (90) days after notice therof has been mailed, the Controller shall so notify the Board of Governors which shall take such action as it may deem appropriate [.], *including, after due notice, suspending such member or member organizations until payment is made in full to the Exchange of such member's or member organization's entire outstanding account balance of all dues, fees, fines, or other charges imposed by the Exchange.*[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis of the Proposed Rule Change

The purpose of the proposed by-law amendment and rule change is to failitiate prompt payment by members, participants and their broker-dealer organizations of dues, users' fees fines and other charges imposed by the Exchange. the by-law amendment and rule change would enable the Exhange the require that a member or participant make payment in full of the entire outstanding balance of his account in order to be reinstated to privileges on the Exchange if suspended for non-payment of such dues, users' fees, fines, or other charges. The Exchange's Board of Governors authorized the by-law amendment and rule change in response to an increase in accounts receivable due from members, participants and their broker-dealer organizations that was experienced in the fourth quarter 1985 and the first quarter 1986.

The proposed by-law amendment and rule change are intended to notify members, participants and their broker-dealer organizations that Exchanges dues, users' fees, fines and other charges should be remitted promptly, and to deter the practice of chronic late payment of solely that portion of a member's or participant's account that has become over ninety days past due or in a delinquent status.

The proposed rule change and by-law amendment are consistent with section 6(b)(4) of the Securities Exchange Act in that they will facilitate the equitable allocation of reasonable dues, fees and other charges among members and participants.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The membership of the Exchange was notified of the proposed by-law

[1] The language of the proposed change to Rule 50 was amended by a letter from the Phlx to the Division of Market Regulation, which clarified the different grace periods between dues and other payments. *See* letter from Murray L. Ross, Secretary, Phlx, to Stephen Luparello, Staff Attorney, Division of Market Regulation, SEC, dated October 29, 1986.

amendment by Circular 86–29 dated June 23, 1986. No written comments or requests for a special membership meeting on the proposed by-law amendment were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or;

(B) Institute proceedings to determine whether the proposed rule changed should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by December 17, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 18, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26677 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–23819; File No. S7–787]

Self-Regulatory Organizations; Transaction Reporting Plan; Notice of Filing of Amendments to the Transaction Reporting Plan With Respect to NASDAQ/NMS Securities

The National Association of Securities Dealers, Inc. on September 26, 1986 submitted amendments to the Transaction Reporting Plan with respect to NASDAQ/NMS Securities ("Plan") to incorporate by reference from Schedule D of the NASD's By-Laws eligibility requirements that determine the NASDAQ securities for which there shall be real-time last sale reporting.[1] The NASD concurrently also is proposing to add to Schedule D of the NASD's By-Laws the specific criteria referred to by the proposed amendment.[2] These eligibility criteria are essentially the Tier II National Market System ("NMS") designation criteria currently contained in Rule 11Aa2–1 under the Securities Exchange Act of 1934, in addition to certain proposed corporate governance requirements previously published for comment.[3] Furthermore, the Commission concurrently is proposing amendments to Rule 11Aa2–1 that would delete these criteria from that Rule and designate as NMS Securities all securities for which real-time last sale reports are required by a transaction reporting plan.[4] Thus, under the NASD and Commission proposals the securities satisfying the proposed eligibility criteria that would be contained in the NASD's Transaction Reporting Plan and Schedule D would continue to be designated as NMS Securities.

Interested persons are invited to submit written comments on the proposed amendment. Persons submitting comments should file six copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. All communications should refer to File No. S7–737 and should be submitted by December 17, 1986.

Dated: November 17, 1986.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–26559 Filed 11–25–86; 8:45 am]

BILLING CODE 8010-01-M

[1] These amendments are submitted pursuant to Rule 11Aa3–1 and 11Aa3–2 under the Securities Exchange Act of 1934.

[2] *See* Securities Exchange Act Release No. 23818 (November 17, 1986), published elsewhere in this issue of the **Federal Register.**

[3] *See* Securities Exchange Act Release No. 22505 (October 4, 1985), 50 FR 41697. The proposed corporate governance standards would become effective 18 months after the approval of the proposed amendments.

[4] *See* Securities Exchange Act Release No. 23817 (November 17, 1986), published elsewhere in this issue of the **Federal Register.**

[Rel. No. IC–15422; 812–6511]

Application for Order; Family Life Insurance Co.

November 19, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Family Life Insurance Company ("FLIC") and Merrill Lynch Variable Annuity Account ("Account").

Relevant 1940 Act Section: Order requested *under* Section 26(b).

Summary of Application: Applicants seek an order approving substitutions of certain securities issued by an open-end management investment company and held by the Account. Applicants require the substitutions in order to preserve the current tax status of certain variable annuity contracts funded by the Account in light of temporary regulations recently issued by the Internal Revenue Service ("IRS").

Filing Date: The Application was filed on October 22, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests may be received by the SEC by 5:30 p.m., on December 11, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. FLIC, Account, Park Place, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Staff Attorney David S. Goldstein (202) 272-2622 or Special Counsel Brian M. Kaplowitz (202) 272-2061 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations and Statements

1. FLIC, a stock and disability insurance company organized under the laws of the State of Washington, is the depositor of the Account and a wholly-owned subsidiary of Merrill Lynch & Co., Inc. The Account is a separate account of FLIC registered under the 1940 Act as a unit investment trust, and was established for the purpose of funding certain variable annuity contracts issued by FLIC (the "Contracts"). The Contracts are individual deferred variable annuity contracts designed for use in connection both with retirement plans qualifying for special income tax treatment under the Internal Revenue Code of 1954, as amended (the "Code"), and for use with plans not so qualifying. The Contracts are registered under the Securities Act of 1933.

2. Premiums under the Contracts are allocated by Contract owners among one or more sub-accounts of the Account for investment in separate investment portfolios (the "Funds") of Merrill Lynch Variable Series Funds, Inc. (the "Variable Series Funds, Inc."), a diversified, open-end management investment company registered under the Act. For each Fund, there is a sub-account of the Account for Conracts under tax-qualified plans ("qualified Contracts") and one for Contracts under nonqualified plans ("nonqualified Contracts"). The Funds in which premiums currently may be invested include the Merrill Lynch Reserve Assets Fund (the "Reserve Assets Fund"), the Merrill Lynch U.S. Government Money Fund (the "U.S. Government Money Fund") and five additional Funds. The investment objectives of the Reserve Assets Fund are to preserve shareholder capital, to maintain liquidity and to achieve the highest possible current income by investing in short-term money market securities, including but not limited to short-term U.S. Government Securities and U.S. Government Agency Securities. These objectives are the same as those of U.S. Government Money Fund except that the latter's investment are limited to U.S. Government or U.S. Government Agency securities.

3. No sales load deductions are made from premiums under the Contracts and Contract owners may transfer all or part of their Contract values from one sub-account to another without charge, subject to certain restrictions on the timing and frequency of transfers. With certain exceptions, withdrawals or partical withdrawals of Contract values are subject to a contingent deferred sales charge. FLIC has reserved the right under the Contracts to substitute, without consent of Contract owners, shares of another investment portfolio for shares of any Fund held by the Account.

4. As set forth in the Propsectus for the Account and pursuant a private letter ruling issued by the IRS on September 30, 1983, the Contracts are expected to be taxed as annuities under Section 72 of the Code so that, for federal income tax purpose, any income, gain or loss realized with respect to the assets held in the Account will be includible in the computation of the income of FLIC and not in the income of Contract owners or of any annuitant or beneficiary under a Conract.

5. On September 15, 1986, the IRS published temporary regulations which supercede the private letter ruling. *Treas. Reg.* §1.817-5T, 51 FR 32633 (1986). The temporary regulations, which become effective as to the Account on December 15, 1986, deny annuity tax treatment for any nonqualified variable annuity contract investing in a portfolio holding more than fifty-five percent (55%) of its assets in securities of the same issuer and provide that all "government securities" are to be treated as securities of a single issuer.

6. The U.S. Government Money Fund will not meet the diversification standards established by the temporary regulations and, consequently, any nonqualified Contract with Contract values allocated to that Fund will forfeit its eligibility for annuity tax treatment under Section 72 of the Code. As a result of the issuance of the temporary regulations, FLIC has determined to cease offering the U.S. Government Money Fund as an eligible portfolio for allocations of premiums or transfers of contract values with respect to nonqualified Contracts. Contract owners have been advised by letter and prospectus supplement of this change and of the reasons therefor, and have been further advised that Contract values allocated to the U.S. Government Money Fund may be immediately transferred to another eligible Fund. FLIC intends to exercise its right under the Contracts to effect the substitution of shares of the Reserve Assets Fund for all shares of the U.S. Government Money Fund then held by the Account for nonqualified Contracts.

7. Section 26(b) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both.

8. The proposed substitution of shares of the Reserve Assets Fund for shares of the U.S. Government Money Fund is necessary to preserve the annuity tax status of nonqualified Contracts, consistent with the investment expectations of Contract owners, and is appropriate in view of their investment objectives. The substitutions will not result in the type of costly forced redemption which section 26(b) was intended to guard against because: (1) No sales load deductions are made from premiums under the Contracts; (2) substitutions will be effected at net asset value without the imposition of any transfer or other charges; and (3) nonqualified Contract owners are exempted from the Contracts' transfer frequency limitations in order to transfer Contract values from the U.S. Government Money Fund to another eligible Fund prior to the substitution or from the Reserve Assets Fund to another eligible Fund within 30 days of receiving notice of the substitution.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26682 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15420; File No. 812-6400]

Application for Exemption; Ohio National Life Assurance Corp. et al.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant(s): Ohio National Life Assurance Corporation (the "Company"), Ohio National Variable Account R (the "Account"), O.N. Equity Sales Company ("ONESCO").

Relevant 1940 Act Sections: Exemption requested under section 6(a) from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) and Rules 6e-3(T)(b)(12), (b)(13), (c)(2), (c)(4), and 22c-1 thereunder.

Summary of Application: Applicants seek an order to permit them to issue flexible premium variable life insurance contracts (the "Contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T), which provide for the waiver of future premiums upon disability of the insured and for a contingent deferred administrative charge.

Filing Date: The application was filed on May 29, 1986, and amended on July 28, and October 23, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 15, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 5th Street, NW., Washington, DC 20549. The Company, the Account and ONESCO, 237 William Howard Taft Road, Cincinnati, Ohio 45219.

FOR FURTHER INFORMATION CONTACT: Staff Attorney David S. Goldstein (202) 272-2622 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Notice of this Application was given previously. However, Applicants again amended their Application subsequent to the expiration of the notice period to reflect changes made to the sales load under the Contracts and to request relief for only two of the Applicants' contracts rather than three, as before. All interested persons are referred to the prior notice, dated August 8, 1986 (Release No. IC-15241) for a summary of the Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

November 19, 1986.

[FR Doc. 86-26683 Filed 11-25-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1024]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Radio Communications; Meeting

The Working Group on Radio Communications of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on December 18, 1986 in Room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meeting is to discuss the results of the Thirty-second Session of the Subcommittee on Radiocommunications of the International Maritime Organization which was held in London during December 1986. In particular the working group will discuss the following topics:

Global Maritime Distress Safety System
Preparations for the ITU WARC for Mobile Telecommunications

FOR FURTHER INFORMATION CONTACT: Lt. McDannold, U.S. Coast Guard Headquarters (G-TTS-1/63), 2100 Second Street, SW., Washington, DC 20593-0001, Telephone: (202)267-1258.

Dated: November 19, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86-26594 Filed 11-25-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 43.13-1A]

Proposed Revision of Current Advisory Circular (AC) 43.13-1A, Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: FAA is soliciting comments on the current issue of AC 43.13-1A.

SUMMARY: This notice announces the proposed revision to an AC used by the aviation community as general guidelines and acceptable practices for aircraft inspection and repairs. Comments are requested from the public on revisions required, changes, corrections of errors, and inclusion of new or different information.

DATE: Comments must be received on or before January 12, 1987.

ADDRESS: Mail or deliver comments on the current AC to: Federal Aviation Administration, Mike Monroney Aeronautical Center, Aviation Standards National Field Office, Engineering and Manufacturing Branch, Airman's Record Building, Room 203, Attention: AVN-110, P.O. Box 25082, 6500 S. MacArthur, Oklahoma City, Oklahoma 73125. Comments mailed or delivered must be identified with "AC 43.13-1A."

FOR FURTHER INFORMATION CONTACT: Jerry Searcy, AVN-110, at the above address, telephone: (405) 686-4171.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the current AC by submitting such written data, views, or arguments as they may desire. Comments must be identified as pertaining to AC 43.13-1A and submitted to the above address. All communications received on or before the closing date for comments will be considered by the Engineering and Manufacturing Branch, AVN-110, Oklahoma City, Oklahoma, before revising the AC. Comments may be inspected at the above address in Room 203 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

Commentators wishing acknowledgement of receipt by the FAA must submit, with their comments, a self-addressed, stamped, postcard bearing the statement: "AC 43.13-1A." The card will be dated and returned to the sender.

Types of comments solicited include:

1. Noted errors—typographical or data.
2. Suggested changes in type of data or format.
3. Suggested inclusion of new material.
4. Suggested additional chapters or addition of latest state-of-the-art technology.
5. Suggested clarification or rewrite of existing material.

Discussion

Advisory Circular 43.13-1a is the document of acceptable methods, techniques, and practices for aircraft inspections and repairs used by the aviation industry in the absence of approved manufacturer's manuals. This AC, used by a large majority of the general aviation industry, was last revised in 1972. A revised document containing corrections and the latest state-of-the-art technology is desired. This AC is one of the most frequently requested documents and will have a significant influence on aviation safety.

The FAA proposes to revise this document in two phases. To accomplish this the first phase will correct all known errors and include minor changes, rewrite, and additions. The second phase will consider new materials, technology, and major changes or additions.

This publication of FAA acceptable practices was developed for, and is used extensively by, the aviation community. To assure that it contains the most accurate and current data available, the FAA solicits industry's input and the benefit of its expertise.

Issued in Washington, DC, on November 18, 1986.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 86-26583 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP85-16; Notice 2]

Olin Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Olin Corporation, of Stamford, Connecticut, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.116, Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids.* The basis of the petition was that the noncompliance was inconsequential as it related to motor vehicle safety.

Notice of the petition was published on November 27, 1985 and an opportunity afforded for comment (50 FR 48857).

Paragraph S5.1.3 of Federal Motor Vehicle Safety Standard 116, requires that when brake fluid is tested according to S6.3, the kinematic viscosities in centistokes (cSt.) at stated temperatures shall be neither less than 1.5 cSt. at 100 °C (212 °F) nor more than the following maximum value for the grade indicated:

(a) DOT 3: 1,500 cSt. at minus 40 °C. (minus 40 °F).

(b) DOT 4: 1,800 cSt. at minus 40 °C. (minus 40 °F).

Petitioner stated that on or about August 11 and 12, 1984, it blended one lot of DOT3 HDCP-550 Brake Fluid which was shipped to Gold Eagle Company (1 shipment), Standard Oil (2 shipments) and to Scholle Company (1 shipment) between September 10 and October 12, 1984. These four shipments comprised the entire Lot.

Prior to shipment, petitioner conducted the test for kinematic viscosity specified in paragraph S6.3. On December 14, 1984 petitioner discovered a typographical error in its HDCP-550 Brake Fluid Product Specification dated September 8, 1982, which listed the minus 40 °C viscosity specification as 1,200 cSt. "minimum" at minus 40 °C. Petitioner's specification should have read 1,200-1,450 cSt. at minus 40 °C.

In the Corporation's opinion the nonconformity presented no safety hazard and therefore no recall was warranted.

The retained test samples were rechecked by Olin and the following values obtained:

Shipment to Gold Eagle: 1,546 cSt.
Shipment to Standard Oil: 1,547 cSt.
Shipment to Standard Oil: 1,552 cSt.
Shipment to Scholle: 1,547 cSt.

Olin stated that the typographical error in their HDCP-550 product specification has been corrected and that it has been reissued. Current Lots of Olin Corporation's HDCP-550 fluid meet Federal Motor Vehicle Standard No. 116.

To substantiate its contention that the noncompliance is inconsequential, Olin stated that Paragraph S5.1.3(b) of Standard No. 116, establishes 1,800 cSt. at minus 40 °C as the maximum viscosity level for DOT-4 brake fluid which is 200 cSt. higher than the viscosity levels of the Lot involved. Further, Olin argued that Standard No. 116 requires that DOT-3 and DOT-4 brake fluids be fully compatible with each other. The mixing of DOT-3 and DOT-4 in motor vehicles could result in minus 40 °C viscosities in the 1,500 to 1,800 cSt. range.

No comments were received on the petition.

The agency has decided to grant Olin's petition. Kinematic viscosity is a measure of the resistance of a fluid to flow. Thus, as the viscosity increases the resistance to flow increases. In cold weather a higher viscosity fluid will flow more slowly through a brake system and the response time will be slower. A higher viscosity fluid will also have a higher boiling point. DOT-3 and DOT-4 brake fluids have different viscosities and boiling points but are required by Standard No. 116 to be compatible with each other (DOT-4 is regarded as a heavier duty fluid, developed in the early 1970's to meet the requirements of the new disc brake systems coming into wide usage at that time). The agency sees no detrimental effects occurring if the Olin fluid is used in motor vehicle brake systems; the fluid will have a slightly higher viscosity than allowed, but well within the viscosity range of a companion brake fluid specified by Standard No. 116.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 20, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-26579 Filed 11-25-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circ. Public Debt Series—No. 37-86]

Treasury Notes; AG-1988

The Secretary announced on November 19, 1986, that the interest rate on the notes designated Series AG-1988, described in Department Circular—Public Debt Series—No. 37-86, dated November 13, 1986, will be 6¼ percent. Interest on the notes will be payable at the rate of 6¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-26642 Filed 11-25-86; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Application for Recordation of Trade Name: "Alaskan Seafood Co."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12) for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ALASKAN SEAFOOD COMPANY" used by the Alaskan Seafood Company, a corporation organized under the laws of the State of Arizona, located at 1827 W. Mission Drive, Chandler, Arizona 85224.

The application states that the trade name is used in connection with fresh frozen seafood, manufactured in Mexico and the United States.

Before final action is taken of the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any

person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before January 26, 1987.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted. Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: November 21, 1986.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 86–26652 Filed 11–25–86; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 10 and 11, 1986. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, DC. The meeting will begin at 9:00 A.M. on Wednesday, December 10 and 9:00 A.M. on Thursday, December 11. The agenda will include the following topics:

WEDNESDAY, DECEMBER 10, 1986

Report on Follow-Up Items from September Meeting
Update on Tax Reform
International Tax
Update on Automated Examination System (AES)
Electronic Filing

THURSDAY, DECEMBER 11, 1986

Report on Problem Resolution Program (PRP) Procedures for Increased Accessibility
Penalties
Last Reflections on Function of Advisory Group

The meeting, which will be open to the public, will be in a room that a accommodates approximately 50 people. If you would like to have the Committee consider a written statement, please call or write Robert F. Hilgen, Acting Executive Secretary, 1111 Constitution Ave. NW., Room 3014, Washington, DC 29224.

FOR FURTHER INFORMATION CONTRACT: Robert F. Hilgen, Acting Executive Secretary (202) 566–4143 (Not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc 86–26602 Filed 11–25–86; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: November 20, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Certificate As To Securities
3. VA Form 27–4709
4. On occasion; Annually; Biennially
5. Individuals or households
6. 9,600 responses
7. 2,112 hours
8. Not applicable

[FR Doc. 86–26590 Filed 11–25–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:18 p.m. on Thursday, November 20, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the Corporation's assistance agreement with an insured bank.

The meeting was recessed at 4:30 p.m., and at 4:38 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(A)(1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Norman Bank of Commerce, Norman, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma on Thursday, November 20, 1986; (2) accepted the bid for the transaction submitted by First Interstate Bank of Oklahoma City, National Association, Oklahoma City, Oklahoma; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Texana National Bank of College Station, College Station, Texas, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, November 20, 1986; (2) accepted the bid for the transaction submitted by First State Bank in Caldwell, Caldwell, Texas, an insured State nonmember bank; (3) approved the application of First State Bank in Caldwell, Caldwell, Texas, for consent to purchase certain assets of and assume the liability to pay deposits made in Texana National Bank of College Station, College Station, Texas, and for consent to establish the sole office of Texana National Bank of College Station as a branch of First State Bank in Caldwell; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(C)(1) Accepted the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of and the assumption of the liability to pay deposits made in First National Bank, Willows, California, which was scheduled for closing later in the day by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accepted the highest acceptable bid for an insured deposit trnasfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, made funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 21, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-26,729 Filed 11-24-86; 10:53 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, December 1, 1986.

PLACE: Marriner S. Eccles Federal Reserve Boad Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed change in payroll computation procedures.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26690 Filed 11-21-86; 4:36 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-41]

TIME AND DATE: Tuesday, November 25, 1986 at 2:30 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-354 (P) (Stainless steel pipes and tubes from Sweden)—briefing and vote.
6. Inv. 731-TA-308 and 310 (F) (Certain butt-weld pipe fittings from Brazil and Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

November 14, 1986.

[FR Doc. 86-26694 Filed 11-21-86; 5:06 pm]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-42]

TIME AND DATE: Wednesday, December 3, 1986 at 2:30 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731-TA-355 (P) (Certain silica filament fabric from Japan)—briefing and vote.

6. Inv. 751-TA-11 (Salmon gill fish netting from Japan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

November 18, 1986.

[FR Doc. 86-26695 Filed 11-21-86; 5:07 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 24, December 1, 8, and 15, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 24

Wednesday, November 26

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)
11:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 1—Tentative

Wednesday, December 3

10:00 a.m.
Briefing by Steering Group on Strategic Planning (Public Meeting)

Thursday, December 4

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 8—Tentative

Wednesday, December 10

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, December 11

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 15—Tentative

Tuesday, December 16

10:00 a.m.
Briefing on Status of TVA (Public Meeting)

Wednesday, December 17

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Quarterly Source Term Meeting (Public Meeting)

Thursday, December 18

10:00 a.m.
Briefing on Chernobyl (Public Meeting)
2:00 p.m.
Briefing on Status of Palisades (Public Meeting)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Request for Hearing by Advanced Medical Systems, Inc." (Public Meeting) was held November 20.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

November 20, 1986.

[FR Doc. 86-26684 Filed 11-21-86; 4:14 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 51, No. 228
Wednesday, November 26, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51648; FRL-3108-5]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 86–25505 beginning on page 41012 in the issue of Wednesday, November 12, 1986, make the following corrections:

1. On page 41013, first column, under **P87–106**, in the tenth line, *"Impact"* should read *"Import"*.

2. On the same page, second column, under **P87–110**, in the first line, *"Importer"* should read *"Manufacturer"*.

3. On page 41015, third column, under **P87–143**, in the third line, "benzenesulfonic" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-14; A-20631]

Conveyance in Cochise County, AZ

Correction

In notice document 86–23428 appearing on page 37082 in the issue of Friday, October 17, 1986, make the following correction:

In the first column, third line, "1987" should read "1976".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-06-4220-10; A-21018]

Order Providing for Opening of Public Lands in Gila County, AZ

Correction

In notice document 86–22178 appearing on page 35057 in the issue of Wednesday, October 1, 1986, make the following correction:

In the second column, fourth line from the bottom "Tps. 4¼" should read "Tps. 4½".

BILLING CODE 1505-01-D

Federal Register

Wednesday
November 26, 1986

Part II

Environmental Protection Agency

40 CFR Part 152

Regulations for the Imposition of Fees for Certain Activities Conducted Under the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[OPP-36101; FRL 3040-6]

Regulations for the Imposition of Fees for Certain Activities Conducted Under the Federal Insecticide, Fungicide, and Rodenticide Act, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR Part 152 be amended to add provisions which will authorize the Environmental Protection Agency to collect fees in advance for certain activities required of the Agency by request of private parties pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., and the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 321 et seq., as amended. The authority for this rulemaking is 31 U.S.C. 9701. The document also solicits comments on possible future elaborations of such a fee system, including annual fees to recover post-registration Agency costs; and differential fees based on Agency costs which relate to the risks of each pesticide or the completeness of the data supporting its registration, or both. The principal differences between the proposed fee system and the possible future elaborations are that the latter would (a) recover more of the costs incurred by EPA to operate the pesticide program and (b) allocate and recover those incremental costs by somewhat different means.

DATE: Comments must be received on or before January 26, 1987.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP-36101," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Joseph F. Powers, Jr., Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1002-C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1485).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Independent Offices Appropriation Act of 1952 (IOAA) contained a provision providing for recoupment by Federal agencies of costs incurred by them in performing certain services for certain beneficiaries. This provision, originally designated as 31 U.S.C. 483(a), was codified into positive law on September 13, 1982, at 31 U.S.C. 9701. This provision, commonly referred to as the "User Charge Statute," authorizes and encourages Federal regulatory agencies to recover, to the fullest extent possible, costs attributable to services provided to identifiable recipients. The relevant text states:

Fees and charges for Government services and things of value.

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on:

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States:

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.

In 1959, the Bureau of the Budget issued Circular No. A-25. This circular was updated in 1963 and 1974. It states in pertinent part:

3. *General Policy.* A reasonable charge . . . should be made to each identifiable recipient for a measurable unit or amount of Government Service or property from which he derives a special benefit.

The Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA) (7 U.S.C. 136 et. seq.) authorizes EPA to regulate pesticide products. The regulation of pesticides includes registering products for sale and/or use

within the United States and continued regulation of these products and their uses for identification of unreasonable harmful effects. Thus, a registration is a license that allows the registrant to market a product.

In recognition of the fact that pesticide applicants and registrants receive certain benefits from EPA's registration activities, the Agency has examined the feasibility and desirability of making the pesticide registration program as self-supporting as possible by having the applicant for pesticide registration, rather than the tax-paying public at large, bear some of the costs of pesticide registration through a registration fee system based on the IOAA. Through the annual appropriation of funds by the Congress, the public provided approximately $67 million to support the pesticide program in FY 1985.

It should be noted that for many years EPA has been collecting fees for processing related tolerance petitions as authorized by FFDCA section 408(o). These fees are placed in a revolving fund which is directly available to the program. However, under current statutory authority, fees collected under the IOAA would be deposited to the U.S. Treasury as miscellaneous receipts rather than being directly available to the program. The Agency has proposed legislation which would permit such fees to be made available to the Agency.

In developing this proposal EPA has reviewed the case law and kept in mind *National Cable Television Assn. v. U.S.*, 415 U.S. 336 (1974), where the Supreme Court distinguished "taxes," which the Court stated could be levied only by the Congress, from "fees," which may properly be charged by Federal agencies pursuant to the IOAA. The distinction drawn was that, unlike a tax, a fee "is incident to a voluntary act, e.g., a request that a public agency permit an applicant" to engage in a regulated activity and is charged for an agency action which "bestows a benefit on the applicant, not shared by other members of society." The user fee proposed in this rule is a "fee" under that definition. Companies choose to produce a pesticide and request EPA to grant initial and continuing registrations for their products. This Agency, by granting such registrations, is bestowing a benefit on the applicant that is not shared by other members of society.

In 1972 an amendment to FIFRA authorizing fees for registration was proposed but was deleted in conference, and the conference report included language indicating that no fees should be charged (S. Rep. No. 92–1540, 92nd Cong. 2nd Sess. (1972)). However, a subsequent amendment to FIFRA, the Federal Pesticide Act of 1978 (Pub. L. 95–396, September 30, 1978), required EPA to study the feasibility of establishing fees payable by applicants requesting registrations. The required study was completed and a report delivered to Congress.[1] In the report, EPA concluded that there were no major technical or administrative constraints on assessing and collecting fees, pursuant to the IOAA.

In this notice of proposed rulemaking, EPA proposes to impose transaction fees for certain registration activities which are required to be completed under FIFRA and the FFDCA when applicants request a registration, a modification to an existing registration, an experimental use permit, or a food additive regulation. The amounts of the proposed transaction fees would be contained in a schedule of fees for specific requested activities. Applicants would be required to submit such fees with applications.

This notice also advises the public of approaches EPA is seriously considering to recover costs associated with post-registration activities. Recovery of these costs is not contemplated by this proposed rule, but may be the subject of a notice of proposed rulemaking in the future. However, the Agency is seeking early public comment to assist it in refining these approaches.

II. Proposed Fee System

A. Activity Costs Proposed for Recovery Through This Rule

In this rule, EPA proposes to include in its user charge system the costs of the following activities requested by applicants to register their products. Under the proposed system, charges would differ depending on the type of activity requested, but would be identical for all requests within the same category (except in the cases where fee waivers or adjustments are applicable; see Unit II.D).

1. *New chemical registrations.* These activities are associated with any application for registration of a pesticide product containing a new active ingredient, i.e., one which is not contained as an active ingredient in any other product that has been registered by the Agency. (New biochemical, biotechnical, or microbial active ingredients would not be included in this category.) This type of action always requires resources to perform a scientific review of data submitted, in order to support a finding that risks to the environment or human health would be at acceptable levels if the new product were registered.

2. *New biochemical, biotechnical, and microbial registrations.* These activities are associated with any application for registration of a pesticide product containing a new biochemical, biotechnical, or microbial active ingredient not contained in any other product that has been registered by the Agency. These include pheromones and hormones used as pesticides and living organisms introduced into the environment to control the population or biological activities of other life forms considered as pests under FIFRA.

3. *New use registrations.* These activities address applications for registration (or for amendments of a registration) entailing a major change to the use pattern of an active ingredient contained in a previously registered product.

4. *Old chemical registrations.* These so-called "me too" activities include review of applications for registration of a new product containing pesticidally active ingredients and uses which are substantially similar or identical to those currently registered. The resources needed to review routine old chemical registration applications vary in a manner similar to those required for technical amendments. Most old chemical registration applications can be processed administratively, while others require a science review.

5. *Amendments.* These activities are associated with any application to amend the registration of a currently registered product not entailing a major change to the use pattern of an active ingredient contained in a previously registered product.

6. *Experimental use permits.* These activities address applications for permits pursuant to section 5 of FIFRA to apply a limited quantity of a pesticide in order to accumulate information necessary to register the pesticide. The application may be for a new chemical or for a new use of an old chemical. The applicant for an experimental use permit may be required to submit data requiring scientific review before the permit is issued. Other applications may need only administrative review.

7. *Food additive regulations.* These activities are associated with the review of petitions or requests for the issuance of regulations prescribing the conditions under which pesticides may be safely used as food additives. (Food additive regulations are issued under section 409 of the FFDCA; the existing tolerance fee requirement (40 CFR Part 180) covers only tolerance petitions or requests for

[1] "Technical and Economic Feasibility of Charging Fees to Cover Costs of Pesticide Registration Programs under FIFRA," Office of Pesticide Programs, February 1980.

issuance of tolerances under section 408 of the FFDCA.)

B. Activities Not Included in the Proposed System

The EPA conducts a number of other activities related to pesticide regulation. These range from services requested of the Agency by identifiable recipients such as State and local governments to more general, Agency-initiated public services such as research and development. The Agency does not now propose to recover the costs of these following activities.

1. *Special local needs.* A State may register additional uses of federally registered pesticides formulated for distribution and use within a State to meet special local needs. EPA, however, upon review of the State-issued registration, may disallow the registration under certain circumstances. EPA does not propose to collect a fee from a State for this review.

2. *Emergency exemption requests.* Federal or State agencies may be exempted from the provisions of FIFRA, as amended, if the Administrator determines that emergency conditions exist requiring such an exemption. The data required by the Administrator in order to make the judgment that an emergency exists are described in 40 CFR 166.20. The most common exemption is to allow the use of a pesticide for a site on which a registration has not been obtained. EPA does not propose to collect fees from the States or other Federal agencies for this activity.

3. *Research and development activities.* EPA has not determined whether the Agency's research and development activities on pesticides can be said to benefit pesticide registrants, per se. EPA, thus, does not propose to include these costs in the current registration fee system.

4. *Pesticide enforcement activities.* These activities provide benefits primarily to the general public, although by providing compliance assistance to the pesticide chemical industry, applicators, and user groups, and by assisting them with product registration for special local needs, emergency exemptions, and experimental use permits, the EPA pesticide enforcement staff does provide general benefits to the manufacturers of pesticides by broadening their markets. EPA believes at this time, however, that it should not propose to charge fees for these activities.

Other pesticide enforcement activities—including the preparation of civil and administrative actions, State grants, and general program oversight—are directed primarily ro actual enforcement of proper use, labeling, and establishment of registration and production reporting requirements. EPA also proposes to exclude the costs of such activities from registration fees. Thus, none of these pesticide enforcement costs are currently considered appropriate for recovery through a system of registration fees.

5. *Certification and training.* EPA's FY 1985 budget for grants supporting applicator certification and training is $2.6 million. The beneficiaries of this program include the applicators, who gain access to restricted use products and improved protection of their health and property; registrants, who are able to market products which might otherwise be cancelled and who benefit generally from the education of users of their more hazardous products; and the general public, through the institution of use restrictions on hazardous pesticides. For programs operated by the Federal government, the Agency is actively considering a number of options which appear to be available for instituting user fees or otherwise recovering certification and training costs. If the Agency does determine that such fees are appropriate, it will establish them through separate rulemaking.

6. *Tolerance petitions, temporary tolerance petitions and exemption from tolerance requests.* The costs of processing requests under FFDCA section 408 for tolerances, temporary tolerances, or exemptions from the need for tolerances will not be recovered under this proposed system, since they are already recovered under the FFDCA tolerance fee system. Costs of processing requests for issuance of food additive regulations under FFDCA section 409 would be recovered in the proposed rule.

7. *Integrated pest management.* The integrated pest management (IPM) program coordinates use of pest control methods and environmental information to prevent unacceptable levels of pest damage by the most economical means, and with the least possible hazard to persons, property, and the environment. Since Agency encouragement of the IPM program benefits the public and accrues to the general public interest, costs associated with this program will not be recovered through fees.

8. *Farm safety.* The farm safety program seeks to protect farmers, farmworkers, applicators, farm families, and others from direct or indirect exposure to pesticides resulting from their extensive use in the farm environment. EPA does not propose to include the costs of administering that portion of the program which is not related to individual registration actions in this user fee system.

9. *Reviews of already registered uses of pesticides.* See Unit III of this preamble.

C. How the User Fees Will Be Calculated

In order to calculate all direct and indirect costs specifically attributable to fee categories in this proposed rule, the Agency conducted an in-depth analysis of the resources expended on registration activity. This study, entitled "Registration Fee Cost Analysis," is available for public inspection at the Office of Pesticide Programs (OPP), Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. It outlines the processes used in determining the costs for the proposed transaction fee using FY 1983 data.

The data used to develop this fee system were derived from the OPP Time Accounting Information System (TAIS), the OPP On-Line Action Tracking System (OLTS), the EPA Financial Management System (FMS), the OPP Extramural Resource Management System (ERMS), and other internal records. Interviews were also conducted with responsible program personnel to verify the information contained in the data bases and the actual steps involved in registering a pesticide.

The TAIS is an automated internal OPP information system developed in 1979 to record professional employee time spent on various activities and projects. Professional employees (exclusive of some administrative and policy analysts) at or below the section chief level were required to complete a TAIS form each pay period (every 2 weeks). Secretaries, clerical employees, and managers (branch chiefs and above) have not been required to submit TAIS forms. In 1983, 378 OPP employees participated in TAIS out of a total OPP work force of 587. The TAIS was also used as a basis for developing tolerance fee schedules. Refer to the Tolerance Fee Cost Analysis, November 1983, in Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

The OLTS tracks actions proceeding through the registration process. Examples of the information contained in this system include: The number of application receipts, the number of actual registrations, the number of withdrawals and cancellations, as well as the number of transfers between categories. The OLTS provided the number of registration actions of each type taken in FY 83. The unit cost (in Full Time Equivalents, or FTEs) for each type of registration activity was

calculated by dividing the total number of FTEs (as reported by the TAIS) for a particular type of activity by the total number of actions of each type (as reported by the OLTS).

The EPA FMS tracks commitments, obligations, and disbursements for salaries and expenses. It was used to determine the average cost of salaries and expenses.

The ERMS tracks the expenditure of contract dollars. This information was used to determine how many dollars were spent on external services to support registration activities.

The proposed fee system consists of a fee per transaction to recover administrative processing costs and scientific review costs related to an applicant's request to register a product under one of these registration/fee categories: New Chemicals; Old Chemicals; New Uses; Amendments; New Biochemicals, Biotechnical and Microbial; Experimental Use Permits and Food Additive Regulations.

Both direct and indirect costs are incurred in performing these administrative processing and science activities. EPA management information systems track and report direct costs attributable to the fee categories. Indirect costs such as secretarial/clerical support, managerial support, and extramural dollars for the program office were allocated to the fee categories. In addition to the total program costs, a portion of the Agency's overhead costs (e.g., the costs of maintaining the Office of the Assistant Administrator for Pesticides and Toxic Substances and the Office of the Administrator) has been prorated to each fee category.

Based on FY 83 Agency cost data and the number of completed registration requests, EPA would recover approximately $18 million through the proposed fee system. This amount is slightly more than one quarter of all costs expended in FY 85 to conduct pesticide activities. The magnitude of these costs for specific fee categories is reflected in the following fee schedule. The fees listed are the 1983 costs which would apply to each application for the designated type of registration.

TYPE OF REGISTRATION

Transaction fee	
New Chemical	$163,100
Old Chemical	3,500
New Use	29,900
Amendment	600
New Biochemical, Biotechnical and Microbial	56,600
Experimental Use Permit	4,000
Food Additive Regulation	5,300

It should be noted that while some of these fees appear large, they reasonably reflect the Agency's costs of processing these types of applications. Moreover, to the best of EPA's knowledge, they represent only a small fraction of applicants' product development costs for these actions. Based on data from the National Agricultural Chemical Association which stated that its members spent $527 million on research and development for pesticides in 1982, the additional $18 million paid in fees would add about 2.9 percent to the expected research and development costs. The fee of $163,100 for a new chemical application represents about 0.7 percent of the $25 million a company would spend in developing a product.

It is the intent of the Agency to charge fees which continue to reasonably reflect the current costs of operating the registration program. The Agency would periodically review costs and fees to make sure they are in balance. Should the methodology or procedure for calculating the user fees warrant change, EPA would make such changes available for public comment prior to initiating a change to the fee schedule.

In order to keep the fees reasonably in line with general costs, the proposed fee schedule would be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. New fees would be printed in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule. The final fees to be established by this rule will be recalculated prior to publication of the final rule to account for increases in the GS pay scale between 1983 and the date of publication of the final rule. For example, if the fees were to be adjusted today they would be increased to account for a 4 percent increase in 1984, 3.5 percent in 1985 and 0 percent in 1986. This would increase all fees by 7.64 percent.

D. When the User Fees May Be Waived or Adjusted

If EPA decides that fees should be charged for pesticide registrations, there will be circumstances under which it may be prudent to grant exemptions or waivers from fees. While the IOAA is silent concerning such waivers, it does provide that the President shall set policies concerning the implementation of the IOAA. Office of Management and Budget (OMB) Circular A–25, section 9 (b), contains guidelines for Federal user charge systems and provides for exceptions to a general user fee policy under several conditions. EPA's interpretation of these policies and examples of how they would apply to registration user fees follow.

1. *Public interest.* If the recipient is engaged in an activity designed to promote the public interest, the registration fee may be waived. This area of consideration covers categories which serve public policy objectives of FIFRA, FFDCA, and the Agency. Examples of these waiver categories are as follows:

a. *Registration or amendments to registrations for some products judged to be useful in integrated pest management (IPM) programs.* The intent of this waiver would be, in part, to encourage the development, dissemination, and use of IPM practices as directed by Congress in FIFRA. The decision on the usefulness of a pesticide product within an IPM framework would be made by EPA on a case-by-case basis.

b. *Minor use registrations.* Congress has mandated the EPA to take special note of economic incentives for minor pesticide uses when requiring test data to support registrations. Thus, waivers of fees for such uses would be consistent with congressional intent. The decision to waive the fee for a minor use registration would be made on a case-by-case basis.

c. *Federally sponsored Inter-Regional Research Project number 4 (IR–4 program).* EPA would categorically waive fees related to costs incurred in registering products or new uses for existing products approved in the federally sponsored Inter-Regional Research Project number 4 (IR–4 program). This program is a nationwide cooperative effort including EPA, United States Department of Agriculture (USDA) Agricultural Research Service, State research services and State experimental stations. Fees will be automatically waived for actions requested by the IR–4 program.

2. *Economic hardship.* A registration fee may also be waived if the imposition of a fee would result in an economic hardship on the registrant. The EPA has, for many years, considered waivers of tolerance fees for economic hardship. Considerations for an economic hardship waiver include size of the firm, pesticide sales and number of registrations with the Agency.

3. *Small business.* The Small Business Administration (SBA) has also suggested that the Agency grant blanket waivers, or fee adjustments, to small businesses. The SBA suggestion would define, for this purpose, a small business as one with annual gross revenue from chemical sales of no more than $40 million and which has no more than 150

employees. For businesses meeting those criteria the SBA has suggested that the fee should be no more than 1 percent of the annual gross revenues for the pesticide for which the registration action was requested.

This proposal does not specifically include a blanket waiver for small businesses but the Agency is very interested in exploring this concept further. It does appear that most pesticide registrants would satisfy the SBA's "small business" criteria. Also, EPA notes that it would be very difficult to determine (in advance of registration) the annual gross revenues for a pesticide, since registration is a prerequisite to legal sale of a pesticide. The effect of the suggested fee adjustment for fee collections or on the pesticide industry has not been determined. The Agency encourages the public to comment on this matter.

The Agency would review all fee waiver requests, whatever their origin, including foreign governments, based on the merits of the requests and the criteria established under 40 CFR 152.18(c).

A fee of $1,100 would be charged for each request for waiver (or refund) to cover costs involved in reviewing such a request, unless the registration fee is less than $1,100; then the amount of the registration fee would be remitted with the request for a waiver. Given the fee schedule proposed in this rule, an application for an amendment is the only case in which the registration fee is less than the $1,100 waiver request fee. Therefore, an applicant requesting a waiver or refund of the $600 registration fee to amend a product should submit $600 with a waiver request. An applicant requesting a waiver or refund of any other registration fee proposed in this rule would submit $1,100 with a waiver request. The $1,100 fee would not be required for waiver requests from applicants with no financial interest in the petition. The proposed waiver fee will be adjusted annually by the same percentage change in the Federal General Schedule (GS) pay scale. The new fees would be printed in the **Federal Register** as a final rule.

If a waiver or refund is granted, any fee charged for request for waiver or refund will be refunded. The fee will not be refunded if the request for waiver is submitted after scientific review has begun on the registration or other application. If the waiver has been denied, the proper fee must be submitted after notice of denial.

III. Options for Future Fee Systems

A. General Authority for Recovering Post-Registration Costs

EPA is also considering the appropriateness of recovering the costs of post-registration activities through user fees. These activities are not specifically sought by registrants, and benefit the public—as well as the registrants—by attempting to ensure that licensed products continue to comply with FIFRA. However, these activities do allow pesticides to remain on the market, and thus bestow a "special benefit" to the registrants. In cases construing two Supreme Court decisions, *National Cable Television Assn.* v. *U.S.*, 415 U.S. 336 (1974), and *Federal Power Commission* v. *New England Power Co.*, 415 U.S. 345 (1974), the IOAA (31 U.S.C. 9701) repeatedly has been interpreted by U.S. Courts of Appeals to allow the recovery of all costs an agency incurs in providing a "special benefit" to a private person, whether or not benefits also accrue to the public at large as a result of the agency activity.

In *Electronic Industry Association* v. *Federal Communications Commission*, 554 F. 2d 1109 (D.C. Cir. 1976), for instance, the court said that "The FCC is entitled to charge for services which assist a person in complying with his statutory duties. Such services create an independent private benefit." This analysis is also valid for postlicensing reviews designed to assure the licensee's ongoing compliance with legal requirements. In a case involving a regulatory scheme closely analogous to pesticide registration, the Nuclear Regulatory Commission was held to be entitled to recover the costs of routine inspections of the facilities of previously licensed nuclear facilities. In *Mississippi Power & Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F. 2d at 231 (5th Cir. 1979), the court concluded that the licensee obtains an ongoing special benefit from retaining its license, and that it is proper to recover the cost of agency activities designed to ensure that the licensee's activities comply with statutes and regulations.

EPA believes that courts would view post-registration reviews under FIFRA similarly. These reviews are based on the tacit assumption that registrants wish to maintain their registrations. (A registrant may always voluntarily terminate a registration if he chooses.) During the course of these reviews, EPA evaluates the data to determine what modifications in the registration, if any, are needed in order that it may be found to comply with the statute and regulations and thus remain in force. EPA may also determine that further data must be submitted in order to update the information base on a chemical.

B. Post-Registration Activities Being Considered for Cost Recovery in the Future—Generic Chemical Review Program

EPA believes that Agency costs incurred for registration standards, special reviews and similar activities related to determining the continuing registrability of products already on the market are recoverable under 31 U.S.C. 9701. The Agency may in the future propose to expand the proposed user fee system to recover the costs of generic chemical review activities initiated by the Agency with respect to existing registered chemicals.

The generic chemical review program examines current knowledge about each active ingredient contained in one or more registered pesticide products, determines the adequacy of the scientific data base supporting currently registered uses, and establishes scientifically based regulatory standards for the reregistration of existing products and registrations of future products which contain that active ingredient. Where warranted, this program conducts risk/benefit analyses and takes appropriate actions to reduce unacceptable risks caused by the use of individual pesticides. The following activities comprise the generic chemical review program.

1. *Registration standard.* A registration standard (RS) is intended to aid the reregistration decision process for pesticides through the assembly and review of all available, appropriate data on active ingredients and the subsequent identification of additional data requirements. On the basis of this review, the Agency establishes the various conditions to be met in order to register or reregister pesticide products containing these active ingredients. One principal intent of the RS program is to ensure that existing products do not pose unreasonable risks to health and the environment. Upon product reregistration under a standard, each affected registrant receives the benefit of continued access to markets.

2. *Data call-in.* A registration standard will be more complete and therefore more effective if certain key data are up-to-date and available for review. Therefore, under the data call-in program, letters are sent to registrants identifying data gaps and requiring registrants to conduct the necessary studies. (Because of scientific advances and more stringent requirements, most

chemicals registered prior to 1978 will not have a complete, up-to-date data base.) This approach enables the Agency to obtain important data at the beginning of the registration standard development process. The Agency then conducts a comprehensive review of available health and environmental data pertaining to the chemical in question. Data call-ins may also be initiated to address new concerns, e.g., ground water contamination potential.

3. *Special review.* The special review process is an intensive risk/benefit review of registered pesticide chemicals suspected of causing unreasonable adverse effects on the environment.

4. *Hearing support.* FIFRA provides registrants the opportunity to ask EPA for a reconsideration of its intent to suspend, cancel, or deny a registration.

5. *Lab data audit.* This activity assures that studies concerning health and environmental effects used in support of pesticide registration actions, generally developed by the registrants, are complete and valid.

C. Possible Approaches for Recovering Post-Registration Costs

Future fee systems would be designed to recover post-registration costs, in addition to costs associated with registrant requests, which the currently proposed fee system would recover. One approach, an annual fee for all science reviews, would combine all science review costs (those involved with registrant requests as well as those involved with post-registration reviews) and split the costs of reviewing an active ingredient among all basic producers of that active ingredient. (Basic producers are those registrants not eligible for the formulator's exemption under FIFRA section 3(c)(2)(d).) The second approach, differential fees related to risks/benefits or completeness of data, would vary fees based on the costs related to reviewing riskier chemicals or those chemicals with data gaps rather than establishing uniform fees within registration and post-registration activity categories. A more complete discussion of these two approaches follows in Unit III.C.1 and 2, respectively.

1. *Annual fee for all science reviews.* This approach would consist of a one-time transaction fee to recover the costs associated with the administrative processing of each requested registration action, and a new annual fee to be assessed on all basic producers of an active ingredient each year the product containing that ingredient remains on the market. The annual fee approach would replace the proposed fee system and would change its focus to more clearly associate the cost of maintaining a scientific review capability with the entire class of those benefiting from this capability.

Most of OPP's review costs are directed at the effects of ingredients of pesticide products, not at the products per se. Moreover, once a pesticide product is registered by Company A, other companies may also seek and obtain registrations for products containing the same ingredient. The data reviews and analyses performed in order to decide whether A's product may be registered normally form the basis for the Agency's decisions on the registrability of the similar products produced by companies B, C, and D. (In this respect, the EPA regulatory program differs from programs of some other agencies, in which a given review can directly relate only to one possible license, e.g., a particular nuclear power plant or television station.) Since all four firms arguably benefit equally from the reviews, it could be considered inequitable to charge only A for the costs of the initial reviews, even though A's application is what initially caused the work to be done.

Conversely, much of the most important and resource-consuming work in the OPP review program is directed at ingredients contained in products which are already registered. Although reviews of registered products and applications for new ones are often on essentially unrelated "tracks," the results of studies received in support of an application for a new product may lead the Agency to perform intense reviews of the continuing registrability of related old products. The Agency is also required to reregister products containing "old" active ingredients. The "old" registrants may not be seeking any new approvals while these reviews are underway, but applications for similar products from new firms may be received at any time. Charging the costs of the reviews concerning a given active ingredient conducted during a particular period only to the persons who happen to seek or obtain registrations during that period would reward unfairly the licensees who had received earlier Agency approvals, since the reviews benefit the old and new registrants equally. A more equitable scheme would recognize these effects by spreading the relevant costs over time and charging each firm which benefited by such Agency work (and thus gained or retained access to marketing rights) a roughly equal share of the resulting costs.

The Agency reviews chemicals episodically. While some costs are incurred because of applications filed—broad, intensive reviews of products containing new active ingredients before they are first approved, and narrow, intensive reviews when applications for major new use patterns are filed—the Agency also incurs major costs unrelated to any particular applicant activity. For example, it conducts broad, intensive reviews during the section 3(g) reregistration of products containing old active ingredients, and broad, intensive review during special reviews initiated when concerns arise about significant risks posed by a registered ingredient. Very little review is conducted in other situations, whether or not "me-too" applications are being processed. Moreover, the time needed for a review depends more upon the complexity of the issues than upon the type of application filed. If the data pose difficult analytical problems, or if the risk/benefit question is a close call, more time will be required than if the data are unequivocal and the risks of a chemical are clearly greater (or clearly lower) than its benefits. Thus, the amount of review activity for a particular ingredient over time is largely unpredictable, either in terms of the number of reviews that will be needed during the life of the chemical or in terms of the difficulty of the reviews. This would make it difficult to set fees, in advance of reviews, based on the amount of work that would be required on the individual chemical, although it may be possible to calculate average costs for certain classes of chemicals.

In addition, the risks and benefits of an active ingredient under review must be considered by EPA in light of the risks and benefits of competing products containing different ingredients. EPA often undertakes major reviews of the risks and benefits of a group of pesticide products containing different ingredients (e.g., all termiticides, all fumigants). This would confound any attempt to assess the costs of review of a particular chemical only against the licensees of products containing that chemical, even on a retroactive basis. Accordingly, assigning the cost of scientific review of the overall chemical data base to the class of basic producers of those chemicals may offer advantages in efficiency and equity over the proposed system.

In summary, this approach would distinguish administrative processing costs for requested registration actions from the overall costs of maintaining a scientific staff for technical reviews of the characteristics of active ingredients. As in the proposed fee system, the administrative costs of processing a specific application would be recovered

by a transaction fee. However, the costs of all scientific reviews would be recovered through an annual fee to be assessed against the basic producers of each registered active ingredient.

Under this approach, applicants would be charged a transaction fee based upon the average cost of registration action processing activities for that type of action plus relevant Agency overhead costs. An annual fee would also be assessed on all basic producers of the active ingredient, and would continue to be assessed for each year the product is on the market. For example, if 600 active ingredients are registered, and the pesticide program incurs annual scientific review costs of $30 million (an average cost of $50,000 per active ingredient), and there are 10 producers of a specific active ingredient, the annual fee would be $5,000 for each producer of that active ingredient ($30 million divided by 600 divided by 10). This approach would significantly reduce the transaction fees proposed in this rule by displacing the cost of scientific review to an annual fee. It would increase collections by approximately $22 million, to a total of about $40 million, or approximately 60 percent of all costs expended on pesticide activities in FY 85.

A variation of this approach would be to collect only generic chemical review costs through an annual fee and collect scientific costs associated with registrant requests through a transaction fee. The annual fee would be an add-on to the proposed fee system. This would ensure that the major portion of scientific review costs would be allocated to all beneficiaries while retaining full recovery of Agency costs occasioned by individual requests. It would also allow recovery of generic chemical review costs to supplement, rather than supplant, the proposed fee system.

2. *Differential fees related to risks/benefits or completeness of data.* This option would impose differential fees within registration and generic chemical review activity categories. The fees would differ in relation to the costs expended to determine the risks/benefits posed by certain classes of chemicals and/or the lack of completeness of their data bases. This approach assumes that chemicals may be categorized into certain classes and that it is possible to calculate the average costs of review for each class of chemicals. The Agency is currently studying this issue.

Like the proposed system, this option would recover, through a transaction fee, both the administrative and the scientific costs associated with registrant requests. Similar to the annual fee option, the differential approach would also recover Agency-initiated generic chemical reviews through an annual fee. However, the annual fee may be imposed per pound of active ingredient produced, rather than being divided equally among all producers of a particular active ingredient.

Unlike the other approaches discussed, the transaction and annual fees in this option would differ in amount for different types of active ingredients in order to better reflect Agency costs. For instance, and purely by way of illustration, pesticides which hit "risk" triggers and demonstrate beneficial characteristics generally require greater resources for review than other pesticides, and certain pesticide classes generally involve higher "risks" than other classes. Similarly, and again by way of illustration, pesticides which lack certain test data, or whose supporting data appear inadequate in light of current test protocols, may require greater Agency resources before review may be completed and a decision made. In addition, EPA costs may be related to the amount of a particular active ingredient produced. Given roughly similar toxicity, the Agency in general tends to give higher priority to those chemicals with high annual production volume, which is often a reasonable surrogate for exposure.

In short, data requirements and risk may be closely related to Agency costs. As an added benefit contrasted with uniform "flat" fees, differential fees might better encourage development and use of less risky pesticides and help reduce data gaps, both by providing incentives to market lower-risk products and by encouraging earlier compliance with Agency data requirements. Well-defined fee waivers (e.g., for minor use products or those subject to final registration standards where a complete data base exists) could reflect lower costs or special public interests associated with identified activities, and could complement this approach.

EPA requests comments concerning this differential fee option, especially on three issues: (1) Whether any differential fee based on cost recovery would be large enough to influence producer or user behavior and, if so, how behavior might be affected; (2) whether, even if such behavior appears unlikely to be affected in general, such differential fees may nevertheless produce significant effects (e.g., on smaller volume pesticide products with gross sales under $5 million) or otherwise improve program efficiency (e.g., by accelerating voluntary cancellation of inactive registrations); and (3) what surrogates or objective criteria might reasonably be used to define circumstances reflecting differential Agency costs, especially related to risks or data gaps, without requiring case-by-case fee determinations.

Consideration must also be given by EPA to the practicality and cost of establishing and maintaining such a complex fee system.

D. Changes in Cost Calculation Methodology for Possible Future Options

The general methodology for determining direct and indirect costs of administrative processing and science review activities covered in the proposed fee schedule would also be used in developing fee schedules for future options. As with the proposed system, data from the TAIS, OLTS, FMS, the OPP ERMS and other internal records would be used to identify and allocate specific Agency expenditures.

However, since the proposed fee system and the possible future options differ on how activities are categorized (registrant-initiated versus Agency-initiated, and/or scientific versus administrative), different cost centers would be used in developing the fee schedules. For example, the Agency would use the "Registration Division" as a cost center for administrative or processing costs related to registration actions, while a combination of divisions contribute to scientific review of an active ingredient.

The differential fee option depends upon identifying classes or "events" that serve as surrogates for cost, rather than distributing the cost of certain services uniformly among the applicants or producers of an active ingredient. This option would differentiate cost by class of chemical. For example, and purely by way of illustration, fees for insecticides might be greater than fees for disinfectants because costs to the Agency for review of insecticides may be found to be greater. Alternatively, one "event" on which to base fees might be special review; special review represents a significant additional cost which most pesticides do not cause the Agency to incur, and fees could reflect this difference. Within classes or "events," fees might be charged per pound of active ingredient used in the United States in the most recent previous year for which data are available.

IOAA authority requires any fee system to be based upon a rational methodology. To be administratively

feasible, that fee system must also be relatively simple to implement. Differentiation of fees requires identification of reasonable surrogates for variable Agency costs and a formula which can easily be used to derive actual fees from such costs. Such surrogates or criteria for defining pesticides which should be subject to higher (or lower) fees may be derivable from historical costs to the Agency of registering or reregistering different types of pesticides, and would project which types of pesticides would likely be subject to particular cost-incurring activities in the near future (e.g., development of registration standards for high volume food use chemicals of certain threshold toxicity), or from combinations of these and similar factors.

E. Current Events

The Agency will, of course, adhere to any FIFRA reauthorization provisions which are enacted and signed into law. It is important to note, however, that today's proposed rule is the direct result of a study on user fees required by Congress in its 1978 amendments to FIFRA. Publishing this proposed rule may generate useful information about mechanisms for fee collection, and can advance public debate on the benefits of post-registration fees by contributing to a more informed sense of the range of potential user fees which may be available under existing statutory authority.

Accordingly, today's proposed rule is being published in order to propose specific fees which would recover the costs of certain actions requested by registrants, as well as to secure and address advance comments on broader principles related to the role of fees in sound pesticide policy. Interested parties will have ample opportunity to scrutinize specific application of those broader proposals during subsequent comment period.

IV. Other Regulatory Requirements

EPA submitted this rule to the Scientific Advisory Panel (SAP) in accordance with section 25(d) of FIFRA and the SAP waived its review of the rule.

As required under section 25(a)(2)(A) of FIFRA, the Agency submitted a copy of this proposed rule to the Secretary of Agriculture. The comments of the Secretary of Agriculture follow:

> We have indicated in the past, and reiterate, that in the case of many agricultural pesticide uses the increased cost of the pesticide cannot be passed on by the farmer to the consumer of his product. It appears that the farmer will be stuck for the costs of a service that benefits the entire public in the provision of a wholesome food supply both in quantity and quality. Therefore, it is not at all clear that the concept of special benefits has been met in this case.

The concept of a special benefit is applicable to pesticide manufacturers who derive that benefit through the registration of pesticides. A registration is a license that allows a registrant to market a product. The courts have repeatedly held that an agency may recoup the cost of providing a special benefit to a private person regardless of whether or not the public at large also derives benefits from the agency activity. Additionally, it is not at all clear to the Agency to what extent the pesticide industry can or will pass the cost of fees (which constitute less than one-half of one percent of gross income from pesticides sales at the retail level) on to the user.

V. Other Statutory Requirements

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has developed a document entitled "Regulatory Impact Analysis of User Charges for Registering Pesticides Under the Federal Insecticide, Fungicide, and Rodenticide Act." This document is available for public inspection at the address identified earlier in the preamble.

A. Executive Order 12291

Under Exective Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this proposal is not major because it does not meet any of the criteria set forth and defined in section 1(b) of the Order.

Also in accordance with E.O. 12291, the proposed rule was submitted to the Office of Management and Budget (OMB) for review.

B. Regulatory Flexibility Act

The proposed regulation has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act and it has been determined that this proposal does not contain provisions which would have a significant adverse impact on a substantial number of small entities.

The Agency recognizes that the establishment of fees to accompany registration applications would have the potential for adversely affecting many small businesses. This would be the case primarily with respect to formulating firms since few small firms or individuals develop new pesticides. To remove all possibility of serious financial harm on small businesses, the proposed regulation includes an explicit waiver provision based in part on economic hardship. This inclusion should alleviate the concerns about impacts on small businesses as expressed in the Regulatory Flexibility Act. The Agency is also requesting today public comment on the concept of a blanket fee adjustment for small business.

C. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 152

Intergovernmental relations, Administrative practice and procedure.

Dated: November 17, 1986.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Part 152 be amended as follows:

PART 152—[AMENDED]

1. The authority citation for Part 152 is revised to read as follows:

Authority: 7 U.S.C. 136 through 136y; § 152.18 also issued under 31 U.S.C. 9701 and 21 U.S.C. 348 and 371.

2. By adding § 152.18 to a proposed Subpart A to read as follows:

Subpart A—General Provisions

§ 152.18 Fees.

(a) *Purpose.* This section prescribes fees to be charged for certain pesticide regulatory activities performed by the Environmental Protection Agency (as authorized by 31 U.S.C. 9701) and provisions regarding their payment.

(b) *Fee amounts.* (1) The fee for processing an application to amend the registration of a currently registered product which is not described by paragraph (b)(6) of this section is $600.

(2) The fee for an application for an experimental use permit under FIFRA section 5 is $4,000.

(3) The fee for processing a petition or request under FFDCA section 409 for establishment of a food additive regulation is $5,300.

(4) The fee for processing an application for registration of a pesticide product containing a biochemical, biotechnical or microbial active ingredient which has not been listed as an active ingredient in any other product registered under FIFRA is $56,600.

(5) Except as provided by paragraph (b)(4) of this section, the fee for processing an application for registration of a pesticide product containing an active ingredient which has not been listed as an active ingredient in any other product registered under FIFRA is $163,100.

(6) The fee for processing an application for registration (or for amendment of a registration) entailing a major change in the use pattern of an active ingredient contained in a previously registered product is $29,900.

(7) The fee for processing an application for registration of a new product which is not described in paragraph (b)(4), (5) or (6) of this section is $3,500.

(c) *Waiver and refund.* (1) Fees will be automatically waived for actions requested by the IR–4 program.

(2) The Administrator may waive or refund part or all of any fee imposed by paragraphs (b)(2) through (7) of this section if the applicant requests a waiver or refund and if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the applicant.

(3) A request for a waiver or refund of a fee shall be submitted in writing by the applicant to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS–767C), 401 M St., SW., Washington, DC 20460. A fee of $1,100 shall accompany every request for a waiver or refund, unless the registration fee is less than $1,100; then, the amount of the registration fee shall accompany the request for a waiver or refund. No fee will be imposed on any person who has no financial interest in the application. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(d) *Payment.* All deposits and fees required by this section shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded with the application to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Registration Fees), Registration Division, P.O. Box 360277M, Pittsburgh, PA 15251. An application for which a waiver of the fee or refund has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on the application.

(e) *Adjustment of fees.* This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made, based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the Rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

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Federal Register

Wednesday
November 26, 1986

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonds; Bond Release Application

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to revise the rule that governs the information needed in an application to release a performance bond. This revision is proposed in accordance with the Secretary's brief of March 5, 1984, in which the Secretary addressed the National Wildlife Federation's challenge to the omission of the permittee's name in the notice of bond release. The proposed rule would require that the notice of bond release include the name of the permittee.

On June 16, 1986, OSMRE accepted a proposal to revise the self-bonding regulations sought by a petition for rulemaking submitted by the National Coal Association/American Mining Congress (NCA/AMC) Joint Committee on Surface Mining Regulations. The proposed revision would allow third parties to guarantee a self-bond.

DATES:

Written Comments: OSMRE will accept written comments on the proposed rule until 5 p.m. eastern time on February 4, 1987.

Public Hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, D.C., Denver, Colorado; and Knoxville, Tennessee, 9:30 a.m. local time on January 28, 1987. Upon request OSMRE also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. eastern time on January 14, 1987.

ADDRESSES:

Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street NW, Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315–L, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW, Washington, DC; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings: Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT".**

FOR FURTHER INFORMATION CONTACT: Frank Mancino, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–7952.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rules should be specific, should be confined to issues pertinent to the proposed rules, and should explain the reason for any recommended change.

Where possible, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates, and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested, in participating at a hearing at a particular location, should inform Frank Mancino (See "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on January 7, 1987. If no one has contacted Mr. Mancino to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions for clarification of issues, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act, Pub. L. 95–87) sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSMRE has by regulations implemented the general requirements of the Act and established performance standards to be achieved by different operations. The regulations dealing with the requirements for performance bonding are contained within 30 CFR Subchapter J, Part 800. This part was revised on July 19, 1983 (48 FR 32932) and August 10, 1983 (48 FR 36429).

Section 800.40 of 30 CFR contains the requirements for release of performance bonds. Under this section, an operator is required to place a newspaper advertisement in a newspaper of general circulation, at least once a week, for four consecutive weeks, notifying the public of the proposed application for bond release. The notification requires, among other things, the permit number, the approval date (for the permit), the location of the land of the permit, the acreage, and the type and amount of the bond as well as the dates and type of reclamation work achieved. In promulgating the 1983 rule, the Secretary assumed that an applicant or permittee would identify himself, since an operator applying for bond release is required to place such an advertisement. This assumption was challenged in *In re: Permanent Surface Mining Regulation Litigation (II),* Civil Action No. 79–1144 (D.D.C. 1984), when plaintiffs raised the issue. The Secretary then agreed to incorporate the name of

the permittee as a requirement of section 800.40. (*In re: Permanent Surface Mining Litigation* Civil Action 79–1144 (D.D.C.), Brief For Federal Defendants, March 5, 1984). This change will execute that agreement. In addition, the words "operator or applicant" are replaced with the word "permittee" in order to clarify the meaning of this part.

On September 19, 1985, OSMRE received a petition in the form of a letter from the Joint NCA/AMC Committee on Surface Mining Regulations. This petition, filed according to the rulemaking provisions of 30 CFR 700.12, proposed revisions in the bonding regulations. On October 29, 1985, OSMRE published the petition in the **Federal Register** (50 FR 43722) for public comment. On June 16, 1986, OSMRE made a decision to accept one proposal and to reject the two other proposals in the petition. Notice of the OSMRE decision was published in the **Federal Register** on July 7, 1986 (51 FR 15047). OSMRE accepted the proposal to revise the bonding regulations to allow for corporations other than parent companies to guarantee a permittee's self-bond. Accordingly, OSMRE proposes to revise § 800.5 and 800.23 to allow for nonparent companies to guarantee the self-bond of a permittee.

III. Discussion of Proposed Rules

The insertion of the permittee's name into the requirements of § 800.40(a)(2) is considered a clarification of the existing requirements. It is authorized by the Act and subsequent regulations and is reasonable in light of the requirements of 30 CFR 800.40.

Section 800.5 deals with definitions for bonding. Paragraph 800.5(c) which defines a self-bond would be revised. The new definition of self-bond would provide for an indemnity agreement with either a permittee or a corporate guarantor for the permittee.

Section 800.23 establishes the requirements and criteria for appoval of a self-bond. This section would be revised only to remove all references to "parent corporation", replacing such a term with the words "corporate" or "corporation". This revision would allow any party to guarantee the self-bond of a permittee as long as it met the requirements of Section 800.23.

During the revision of the bonding regulations in 1982–83, a commentor proposed revision 800.23 to allow for non-parent guarantors for a self-bond. OSMRE rejected this comment on the grounds that such a provision could increase the risk to a regulatory authority (48 FR 36425). However, in view of information presented during the public comment period on the rulemaking petition, OSMRE has reached the conclusion that allowance of this provision would not increase the risk to a regulatory authority. Instances have been presented of mine mouth powers plants, dependent upon the coal from the adjacent mine, that would be willing to guarantee the self-bond for the mine operator. Although a corporation such as a utility company is not a parent to the mine operator, in such an instance, it does have a significant vested interest in the proper operation of the mine.

Therefore, OSMRE concluded that this proposal is reasonable because it would not significantly increase the risk to a regulatory authority in accepting a self-bond guarantee by such an entity as long as that corporation met the financial requirements for a self-bond.

Effect in Federal Program States

The rules proposed today, if adopted, would be applicable through cross-referencing in those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947 respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements contained in 30 CFR 800.11, 800.15(c), 800.21(c), 800.23(a), 800.30(b), 800.40(a), and 800.60(a) have been approved according to Office of Management and Budget procedures under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0043.

Executive Order 12291

The U.S. Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule would not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts on the human environment of this proposed rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the **"ADDRESSES"** section of this preamble. An EA on the final rule will be completed and a final conclusion reached on the significance of any resulting impacts before issuance of the final rule.

Author

The principal author of this proposed rule is Frank Mancino, Physical Scientist, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–7952.

List of Subjects in 30 CFR Part 800

Coal mining, Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Part 800 as follows.

Dated: October 24, 1986.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for Part 800 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

2. Section 800.5 is amended by revising paragraph (c) to read as follows:

§ 800.5 Definitions

* * * * *

(c) *Self-bond* means an indemnity agreement in a sum certain executed by the permittee or any corporate guarantor and made payable to the regulatory authority, with or without separate surety.

3. Section 800.23 is amended by removing the definition of *parent corporation* from paragraph (a), and by revising paragraphs (b) introductory text, (c) introductory text, (d), (e)(1), (2) and (4), (f) and (g) to read as follows:

§ 800.23 Self-bonding.

(a) * * *

* * * * *

(b) The regulatory authority may accept a self-bond from an applicant for

a permit if all of the following conditions are met by the applicant or its corporate guarantor:

* * * * *

(c) The regulatory authority may accept a written guarantee for an applicant's self-bond from any corporate guarantor, if the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

* * * * *

(d) For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) * * *

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally.

(2) Corporations applying for a self-bond or corporations guaranteeing a permittee's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporations. A copy of such authorization shall be provided to the regulatory authority.

* * * * *

(4) Pursuant to § 800.50, the applicant or corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) A regulatory authority may require self-bonded applicants and corporate guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the regulatory authority immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

4. Section 800.40 is amended by revising paragraph (a)(2) to read as follows:

§ 800.40 Requirement to release performance bonds.

(a) * * *

(2) Within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to § 800.40(f) and (h). In addition, as part of any bond release applicant, the permittee shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

* * * * *

[FR Doc. 86-26640 Filed 11-25-86; 45 am]

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Federal Register

Vol. 51, No. 228

Wednesday, November 26, 1986

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
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Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

39847-39992.....3
39993-40120.....4
40121-40300.....5
40301-40398.....6
40399-40780.....7
40781-40956.....10
40957-41066.....12
41067-41292.....13
41293-41470.....14
41471-41594.....17
41595-41754.....18
41755-41928.....19
41929-42078.....20
42079-42196.....21
42197-42542.....24
42543-42814.....25
42815-42986.....26

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5562.....39849
5563.....39851
5564.....40399
5565.....40403
5566.....40957
5567.....40959
5568.....40961
5569.....41293
5570.....41471
5571.....41595
5572.....41755
5573.....41929
5574.....42197
5575.....42543
5576.....42545
5577.....42815
5578.....42817

Executive Orders:
11157 (Amended by EO 12573).....40954
12170 (See Notice of November 10, 1986).....41067
12572.....40401
12573.....40954
12574.....42199

Administrative Orders:
Notices:
November 10, 1986.....41067
Presidential Determinations:
No. 87-2 of October 22, 1986.....39847
No. 87-3 of October 27, 1986.....40301

5 CFR

Ch. XIV.....40121
532.....39853
874.....40975

Proposed Rules:
335.....40436

7 CFR

29.....40405
68.....40121
210.....41295
301.....41931
421.....40963
441.....41757
905.....40781
906.....41069
907.....40778, 41295, 42079
910.....39853, 40778, 41296, 42079
944.....41069
966.....41071
989.....40122
1097.....40782
1137.....42819
1280.....40408
1477.....41757
1900.....40783
1924.....41597
1941.....40783
1943.....40783
1944.....41597
1945.....40783
1951.....42820
1955.....40783
1962.....40783
1965.....40783
1980.....40783

Proposed Rules:
8.....42540
57.....40174
68.....40174
400.....41800, 42108
425.....40438
810.....41971
1011.....40030
1032.....42109
1036.....42579
1064.....40176
1102.....40176
1106.....40176
1108.....40176
1126.....40176
1137.....39863
1138.....40176
1786.....42846
3402.....41466

8 CFR

100.....42080
103.....39993
316a.....40123

Proposed Rules:
103.....40207
214.....40207

9 CFR

77.....42081
91.....41075
92.....40124
202.....42082

Proposed Rules:
51.....41108
92.....41109
101.....41975
102.....41975
103.....41975
104.....41975
107.....41975
114.....41975
115.....40034
118.....40034
319.....42239

10 CFR

50.....40303, 41353
51.....40303
430.....42823

Proposed Rules:
50 ..... 40334, 40335
70 40208
73 40438
74 40208
430 40441
435 41637
455 40441
961 40684

11 CFR

Proposed Rules:
100 41110
106 41110
9001 41110
9002 41110
9003 41110
9004 41110
9005 41110
9006 41110
9007 41110
9031 41110
9032 41110
9033 41110
9034 41110
9035 41110
9036 41110
9037 41110
9038 41110
9039 41110

12 CFR

Ch. VII 42083
225 ..... 39994, 40963
227 41763
543 40127
546 40127
552 40127
562 40127
563 40127
563b 40127
574 40127
600 41932
601 41932
602 41932
603 41932
604 41932
611 41932
612 41932
613 41932
614 41932
615 41932
617 41932
618 41932
620 42084
621 42084

Proposed Rules:
211 41801
226 ..... 42241, 42248
262 41801

13 CFR

107 40000

Proposed Rules:
129 42255
140 42547

14 CFR

1 40692
39 ..... 40001-40003, 40312, 41950, 40408, 40409, 40969, 41076-41079, 41473, 42201-42205
43 40692
45 40692
61 40692
71 ..... 39855, 40156, 40410, 40970, 41612, 41740, 42206, 42207
91 40692
95 42827
97 ..... 40971, 42832
133 40692
135 40692
204 40410
291 40410

Proposed Rules:
Ch. I 42255
25 42583
39 ..... 39864, 39865, 40032-40035, 40209, 40210, 40442, 40811, 40985, 41110, 41112, 41113, 41638, 41979-41981, 42850-42854
71 ..... 39866, 39867, 40036, 40812, 41748, 42256, 42856
73 ..... 41114, 41116, 42256
121 42583
150 40037
159 41290

15 CFR

372 40156
373 40156
374 40156
377 40156
379 40156
390 40156
399 40159
806 41476

Proposed Rules:
303 40813
806 42583

16 CFR

13 ..... 40788, 41613
307 40005
425 42087

Proposed Rules:
13 ..... 40039, 40336, 40443

17 CFR

200 40789
202 40791
210 42048
211 41079
229 42048
239 42048
240 ..... 40792, 41296, 42048
249 42048
270 ..... 42048, 42207

Proposed Rules:
1 41117
3 40814
33 41117
201 39868
229 ..... 39868, 42073
230 39868
239 42073
240 ..... 42073, 42856

18 CFR

154 41080
270 40972
271 40973

Proposed Rules:
154 41982
271 ..... 41806, 41982
1307 40338

19 CFR

103 ..... 40338, 40792

20 CFR

404 41950
422 41950

Proposed Rules:
404 42045

21 CFR

5 41764
73 40160
74 41765
81 ..... 39856, 41765
82 41765
123 41615
131 40313
133 42088
172 40160
182 42676
184 42676
201 41765
520 ..... 41081, 41783, 42163, 42833
522 41476
814 40414
868 40378
874 40378
1308 42834

Proposed Rules:
101 42584
150 40817
155 41987
344 42676
358 42676
874 ..... 40394, 40396
878 40396
886 40396

22 CFR

526 40160
527 40160

23 CFR

625 40817
637 40415

24 CFR

200 42088
215 42088
235 42088
236 42088
247 42088
812 ..... 42088, 42090
880 42088
881 42088
882 42088
883 42088
884 42088
885 42090
886 42088
912 42088

26 CFR

1 42835
31 40167
602 40167

Proposed Rules:
1 40211
7 40211
20 40211
25 40211
31 40232
53 40211
56 40211

27 CFR

19 40023

Proposed Rules:
4 41355
5 41355
7 41355
9 41639

28 CFR

544 42166

Proposed Rules:
2 42593
545 42167

29 CFR

2509 41262
2510 41262
2520 41285
2550 41262
2619 41298
2676 41299
1910 41477
1978 42091

Proposed Rules:
1910 42257
1926 ..... 42680, 42718, 42750

30 CFR

701 ..... 41734, 41952
705 40026
761 41952
764 41952
769 41952
772 41952
773 41952
780 41952
784 41952
785 41952
816 ..... 41734, 41952
817 ..... 41734, 41952
918 40793
946 42548
948 40795
950 42209

Proposed Rules:
15 41046
250 40819
256 40819
800 42984
904 42266
917 42267
938 42267

31 CFR

316 39990
332 39990
342 39990
351 39990
352 39990
545 ..... 41906, 41911
555 41916

Proposed Rules:
10 40340
103 42269

32 CFR

99 42555
150 42557
198 41784
289 41962
291b 41300
701 42836
706 ..... 41477, 41478
2003 40680

Proposed Rules:
166 40820
231a 40828

855.....41121

33 CFR

110.....39857, 42163
117.....39857, 40315, 41478, 41894
165.....41479, 42220, 42562
320.....41206
321.....41206
322.....41206
323.....41206
324.....41206
325.....41206
326.....41206
327.....41206
328.....41206
329.....41206
330.....41206
334.....42838

Proposed Rules:

100.....40341
110.....41642, 42269
117.....40342
151.....40950
158.....40950
165.....42595

34 CFR

222.....41562
668.....41920
674.....41920
675.....41920
676.....41920
682.....40886
683.....40886
690.....41920

35 CFR

251.....40418
253.....40418

36 CFR

7.....40418
211.....41785
223.....40315
251.....41081

38 CFR

Proposed Rules:

3.....41644
17.....41807
36.....41808

39 CFR

111.....41300
221.....40796
222.....40796
223.....40796
244.....40796
776.....40170

40 CFR

51.....40656
52.....40316, 40317, 40419, 40656, 40798, 40799, 40975, 41786, 41963, 42221–42225, 42563–42565
60.....42768–42796, 42839
62.....40799, 40802, 41788
81.....40803, 41788, 42227
190.....42573
260.....39859, 40572
261.....39859, 40572, 41082, 4110, 41306, 41323, 41480–41501, 41616–41624
262.....39859, 40572
264.....39859, 40572
265.....39859, 40572
268.....39859, 40572
270.....39859, 40572
271.....39859, 40572
300.....41570
413.....40420
433.....40420
712.....41328
716.....41328
790.....41331
795.....40318
799.....40318, 41331

Proposed Rules:

52.....40446, 40447, 40828, 42111 41809, 41810
60.....40043, 40448, 42800
81.....40043, 41355
86.....40986
152.....42974
180.....40987, 40988, 41811, 41812
260.....40726
261.....39968, 40343, 41900
264.....40726
265.....41646
270.....40726
300.....41593
763.....42812

41 CFR

101–40.....40805

42 CFR

405.....41332
406.....41332
408.....41332
409.....41332
410.....41332
412.....42229
413.....42229
421.....41332
431.....41332
433.....41332
435.....41332
489.....41332

Proposed Rules:

36.....40108
58.....41988

43 CFR

2910.....40807

Public Land Orders:

6628.....40421
6629.....41104
6630.....41627

Proposed Rules:

11.....41131
426.....40742, 40774

44 CFR

64.....39859, 41505, 42574
65.....40330

Proposed Rules:

205.....41132

45 CFR

5b.....41352
96.....40026
1612.....40422

46 CFR

252.....40422

Proposed Rules:

98.....40951
151.....40951
153.....40951
172.....40951
580.....41132

47 CFR

0.....41105
2.....41628
69.....42235
73.....40170, 40433, 40434, 40976, 40977, 41628
94.....41629
97.....39859, 41630, 42576

Proposed Rules:

22.....42597
25.....40467
67.....40232
69.....40990
73.....40467, 40468, 41357–41360, 41647, 42270
74.....40990
78.....40990

48 CFR

Ch. 7.....42844
204.....42095
223.....42095
252.....42095
433.....41790
502.....39861
505.....41506
509.....39861
513.....41506
516.....39862
519.....41506
552.....41506
702.....41106
705.....42844
706.....42844
1401.....41964
1405.....41964
1406.....41964
1414.....41964
1415.....41964
1419.....41964
1420.....41964
1428.....41964
1437.....41964
1452.....41964
1453.....41964
2413.....40331
2433.....40331
2901.....40372
2902.....40372
2903.....40372
2905.....40372
2906.....40372
2909.....40372
2913.....40372
2914.....40372
2915.....40372
2916.....40372
2917.....40372
2919.....40372
2933.....40372
2943.....40372
2949.....40372
5350.....40977

Proposed Rules:

1.....39964
14.....41897
22.....39964
52.....39964, 42805
53.....39964
203.....42113
252.....42113
PHS 352.....40108

49 CFR

71.....41631
171.....42174
172.....41631, 42174
173.....41631
192.....41633, 41634
541.....42577
571.....40979
1058.....41635
1063.....42097
1135.....40171
1152.....42098
1312.....40171

Proposed Rules:

Ch. V.....39877
172.....42114
533.....40344
571.....42598

50 CFR

17.....41790
20.....41508, 42098, 42103
36.....41508
216.....40171
371.....41509
611.....40810, 41797
652.....40173
655.....42237
663.....41969
671.....40027
672.....41797
675.....40810, 41797

Proposed Rules:

17.....40044–40051, 42116
216.....41814
222.....42271
611.....41989
644.....40233
650.....40468
661.....42273
672.....42603
685.....41989

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 20, 1986.